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OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Sixth periodic report of States parties due in 1994

Addendum

GUATEMALA*

[25 May 1994]

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* This document contains the 2nd, 3rd, 4th, 5th and 6th periodic reports due on 17 February 1986, 1988, 1990, 1992 and 1994 respectively. For Guatemala's initial report and the summary record of the meetings at which the Committee considered that report, see documents CERD/C/111/Add.2 and CERD/C/SR.686-687.

The information submitted by Guatemala in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in the basic document HRI/CORE/1/Add.47.

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* The annex is available for consultation in the Secretariat's files.

INTRODUCTION

1. The State of Guatemala has been a signatory and Contracting Party to the International Convention on the Elimination of all Forms of Racial Discrimination since 18 January 1983 when the Convention entered into force.

2. On 15 February 1984, the State of Guatemala submitted to the Committee, through official channels, its initial report. The State of Guatemala has fallen behind with the preparation and submission of the periodic reports and is now submitting the first such report. This report consists of two parts structured as follows.

3. Part I presents information on the demographic aspects associated with the ethnic makeup of Guatemalan society, with a view to explaining the multicultural conditions which constitute the framework of national life in all its manifestations. It goes on to describe the social dynamics, with reference to the terms used to designate the various sectors of the Guatemalan population, and the trends among the groups of Mayan origin. Next, it examines the role of education and training in minimizing the ethnic contradictions which prevail among some sectors of the population. The report also includes an analysis of the structure and leadership of the peasant movements focussed on some of the most representative organizations. Finally, the first part concludes with a review of the indigenous organizations and presents percentage data for each department in which these organizations operate.

4. Part II relates to Articles 2 to 7 of the Convention. Each of these articles is compared analytically with the pertinent Guatemalan domestic legislation. In each case the comparison is followed by a commentary which attempts to reflect the present state of affairs as regards racial discrimination in Guatemala.

5. To be properly understood, the present situation in the State of Guatemala, with respect to racial discrimination, needs to be analyzed against the background of national historical development in its economic, social and political aspects.

6. The State of Guatemala undertakes, as from this day, to fulfil its obligations contracted at both national and international level, and to this end is promoting and implementing measures in all areas of government and society to ensure that human rights are respected and freely exercised, with a view to counteracting any possible manifestation of racial discrimination.

7. It only remains to add that, in its internal legislation, the State of Guatemala provides for the imposition of penalties on those who, as individuals or groups, encourage or foment racial discrimination.

I. GENERAL

A. Demography

8. In 1992, the population numbered 9,605,828, with the following ethnic composition: Ladino or Mestizo, 4,652,695 (48%); Mayan, 4,953,133 (52%).

9. The languages spoken in Guatemala are: Spanish (official); Mayan (21%); Garifuna (1%); Xinka (1%).

10. The population is distributed as follows:

	Urban	Rural
Ladino or Mestizo	1,768,024	2,884,671
Mayan	1,846,742	3,106,391

11. The percentage ethnic distribution by department is as follows:

Department	Population	
	Mayan	Ladino
Sololá	94.0	6.0
Totonicapán	91.0	9.0
Alta Verapaz	89.0	11.0
El Quiché	85.0	15.0
Chimaltenango	79.0	21.0
Huehuetenango	65.0	35.0
Quetzaltenango	60.0	40.0
Baja Verapaz	57.0	43.0
Suchitepéquez	56.0	44.0
San Marcos	48.0	52.0
Sacatepéquez	46.0	54.0
Chiquimula	35.0	65.0
Jalapa	33.0	67.0
Retalhuleu	31.0	69.0
Izabal	22.0	78.0
El Petén	22.0	78.0
Guatemala	12.0	88.0
Escuintla	9.0	91.0
Jutiapa	8.0	92.0
Santa Rosa	3.0	97.0
Zacapa	2.0	98.0
El Progreso	0.7	99.3

12. The age structure of the population in general is as follows:

Age	Total	%
Less than 15 years old	4,390,920	46
Women	2,153,682	
Men	2,237,238	
From 15 to 24 years old	1,913,413	20
Women	943,143	
Men	970,270	
From 25 to 64 years old	2,980,452	31
Women	1,430,616	
Men	1,549,836	
65 years old and over	321,043	3

13. The levels of poverty can be represented as follows:

Level	Total	%
Extreme poverty	6,195,759	64.5
Non-extreme poverty	1,815,502	18.9
Total poor	8,011,261	83.4
Non-poor	1,594,567	16.6

14. The numbers and percentages of births and deaths by region in 1990 are indicated below:

Region	Births	%	Deaths	%
Total	352,150	100	72,748	100
Metropolitan	61,962	18	13,772	19
North	30,466	9	5,216	7
North-East	29,761	8	5,448	7
South-East	30,957	9	5,934	8
Central	34,791	10	7,781	11
South-West	99,808	28	22,458	31
North-West	53,042	15	10,216	14
El Petén	11,363	3	1,922	3

15. The annual rate of population growth is 2.9%.

16. Life expectancy:

Female	67.33 years
Male	62.41 years

The masculinity ratio is 102% and the dependency ratio 96%.

17. The fertility rate by age group (1990-1995) per thousand women (Segeplan projection) is indicated below:

Age (years)	Total
15 - 19	123.9
20 - 24	262.2
25 - 29	261.7
30 - 34	212.0
35 - 39	141.7
40 - 44	60.9
45 - 49	10.5

18. The migration rate by ethnic group is:

Town	%	Village	%
Maya	14.7	Maya	20.7
Ladino	27.2	Ladino	34.0

and by destination:

Place	%
Guatemala	56.1
Escuintla	18.9
Izabal	13.0
El Petén	7.2
Retalhuleu	3.4
Suchitepéquez	2.0
United States	n.d.

B. Social dynamics

19. The terms ladino, mestizo, Indian, indigena, natural (native) and Mayan are used to distinguish between Guatemalans according to their physical and cultural characteristics.

20. The term "Ladino" was first employed during the colonial period. It was applied to all those who did not possess the characteristics of Indians or persons of Spanish extraction and were of less than noble rank. These people had neither privileges nor special responsibilities, with the result that they became marginalized. To survive, they had to live on their wits, which led to the Spanish calling them "ladino", meaning cunning. Although very poor, they always considered themselves superior to the Indians. The Ladinos were the product of intermarriage between Indians and Spaniards, Spaniards and Africans, Creoles and Indians and, in short, of the entire range of crosses possible

during the colonial period. The most appropriate term for the Ladinos would be mestizo, since they are of mixed blood. However, this is not the normal usage in Guatemala.

21. "Indian" is a term of historical origin derived from the assumption that the New World corresponded to or was part of the West Indies.

22. The term indigena was used in Europe to designate people who were born or originated in the New World. It came into general use in America as a substitute for the word Indian, which has pejorative overtones.

23. The term natural (native) is used by members of groups of Mayan origin to refer to themselves; they do not use the terms "Indian" or "indigena".

24. The trend is now to use the term Mayan rather than Indian, natural or indigena, with a view to reinforcing a legitimate identity.

25. Indian and Ladino are contradictory terms. Traditionally, Indian is used by the Guatemalan people in a disparaging sense. The term Ladino is generally accepted.

26. Of the 4,953,133 people who make up the population of Mayan origin 3,072,984 or 31% of the country's total population are monolingual, communicating in their own language. The remaining 21% are bilingual, as a result of an endocultural process.

27. The population of Mayan ancestry is difficult to quantify. Different criteria have been used to define it: personal attire, first names and family names, the survey-maker's judgment, third-party assessment, the language criterion. The present report employs a language criterion for defining the ethnic groups of Mayan ancestry. The figures are approximations. Various studies have been made to determine the size of this population, but the results are inconsistent:

Source	Year	Population
Official census	1981	2,174,469
CADAL a/	1983	3,783,916
Lastra, Yolanda	1986	2,095,215
Kauffman	1990	2,230,000
SEGEPLAN b/	1992	4,953,133

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a/ Latin American Anthropological Documentation Centre.

b/ Ministry of Economic Planning.

C. Education and training

28. Apart from the laws for the protection of the people of Guatemala, there are institutions for the advancement of the population of Mayan ancestry.

Academy of Mayan Languages

29. This institution was established on 18 October 1990, by Decree No. 65-90, following recognition of the rights of the individual and of communities and their cultural identity, in accordance with their language, customs and traditions, and recognition of the fact that the nation includes various ethnic groups of Mayan ancestry which the State has a duty to protect.

30. The Academy is an autonomous State institution whose task is to promote the dissemination of the Mayan languages, research, plan and programme linguistic, literary, educational and cultural projects and provide appropriate guidance and services. Its objectives are as follows:

(a) To promote and carry out scientific research in order to encourage and support activities aimed at developing the country's Mayan languages, within the general framework of the national culture;

(b) To plan and execute educational and cultural development programmes based on the results of the anthropological, linguistic and historical research carried out;

(c) To draw up, implement and promote bilingual and monolingual publication programmes in order to encourage the understanding and use of the Mayan languages and strengthen Guatemalan cultural values;

(d) To standardize the use and application of the Mayan languages of Guatemala in every field;

(e) To ensure that the Mayan languages and other Guatemalan cultural values are recognized, respected and fostered;

(f) To provide the Government and other bodies with technical and scientific advice within its sphere of competence.

National Programme of Bilingual Intercultural Education (PRONEBI)

31. This programme was set up on 20 December 1984 under Order No. 1093-84. The bilingual education programme derives from the experience gained with the campaign to eliminate illiteracy introduced in the sixties and from the investigation carried out in 1979 in 110 communities of Mayan origin, when it was found that:

(a) Pre-primary schoolchildren, up to the second grade, learn their lessons more easily when they are taught in their own language.

(b) For the pupils who speak Mayan, teaching Spanish as a second language is more effective, from the standpoint of oral and written comprehension, than teaching it as the first language, as is the case at present under the traditional school system.

(c) School enrolment and graduation rates are improving as a result of teaching in Mayan, while drop-out and failure rates are falling.

Scope and Achievements of the Programme in 1993
(pre-primary to sixth grade)

Department	Enrolment	Graduated		Not graduated		Absent	
		Boys	Girls	Boys	Girls	Boys	Girls
Guatemala	1,182	401	344	79	89	165	104
Sololá	14,240	5,326	4,394	1,669	1,484	753	614
Totonicapán	15,446	6,116	4,745	1,681	1,748	657	499
Huehuetenango	13,427	5,508	4,209	1,594	1,244	488	384
El Quiché	10,487	3,818	3,213	1,031	957	837	631
Baja Verapaz*	430	167	132	44	25	31	31
Alta Verapaz	18,770	6,604	4,201	2,745	1,857	2,052	1,211
Izabal*	126	31	44	20	11	9	11
Chimaltenango	8,331	3,202	2,881	776	733	406	333
Total	82,339	31,173	24,163	9,639	8,148	5,398	3,818

* Pre-primary only.

32. The programme employs a total of 2,790 bilingual teachers in 1,044 schools.

The National Anti-Illiteracy Committee (CONALFA)

33. The issuing of Decree No. 72 on 8 March 1945 marked the beginning of a systematic statutory process of elimination of illiteracy with the implementation of 11 anti-illiteracy campaigns and the establishment of the National Anti-Illiteracy Programme operating through specialized agencies of the Ministry of Education.

34. This legislation remained in force until 1978. On 9 June of that year, under Decree No. 9-78 of the Congress of the Republic, a new Anti-Illiteracy Law was promulgated. This period witnessed the launch of another anti-illiteracy campaign, known as the Guatemalan Anti-Illiteracy Movement (MOGAL), which operated during the years 1981-1982.

35. On 8 July 1986, the Congress of the Republic passed Decree No. 43-86 creating the National Anti-Illiteracy Committee (CONALFA), in accordance with transitional article 14 of the Constitution.

36. In this Decree, article 7 of the transitional provisions states that: "This law shall be translated into and widely circulated in at least four of the country's indigenous languages: Quiché, Cakchiquel, Kekchi and Mam. To this end,

the Ministry of Education may call upon the participation of the institutions whose functions are relevant to this provision."

37. The national anti-illiteracy policy can be summarized as follows:

(a) The elimination of illiteracy is one of the fundamental social processes involved in the attainment of the objectives of national development.

(b) The elimination of illiteracy is an essential tool for developing and strengthening the process of democratization and effectively achieving respect for human rights and therefore peace and social justice.

(c) The anti-illiteracy campaign is aimed at providing universal basic education for all the country's citizens, within the framework of the objectives of the Education Master Project in Latin America and the Caribbean.

(d) To ensure the effective attainment of objectives and goals, the elimination of illiteracy calls for a systematic and sustained effort of intersectoral and institutional coordination.

38. The specific objectives are:

(a) To improve the quality of the educational process so that literacy workers are able to participate by developing skills, abilities and aptitudes which admit them to new educational levels;

(b) To develop Integral Basic Education options for adults between 15 and 46 years of age, with priority for those who live in rural and urban-fringe areas;

(c) To define the profile of the newly literate Guatemalan and develop a curriculum which reflects the reality of his situation through the use of innovative options;

(d) To develop various schemes for the newly literate which would permit the inclusion of young people who fail to complete formal primary education;

(e) To train and instruct specialized personnel in the various pedagogical and administrative techniques in order to ensure the success of the post-literacy programme;

(f) To help to reinforce the national identity by giving greater prominence to the forms of cultural expression of the country's various ethnic groups through the bilingual post-literacy process;

(g) To strengthen the principles of solidarity, social harmony and the common good, as well as civic rights and duties, in order to consolidate democracy through the post-literacy programme;

(h) To promote the active participation of all the social sectors in the planning, implementation and evaluation of the post-literacy process;

(i) To obtain undertakings from public and private institutions to finance and/or to provide technical assistance with the implementation of economic and productive projects generated by the post-literacy groups;

(j) To give priority attention in the post-literacy period to graduates of the initial stage from regions with a higher illiteracy rate.

39. The global strategies are as follows:

(a) Priority attention and service for:

(i) rural and urban-fringe areas with the highest proportion of graduates of the initial stage;

(ii) women;

(iii) the indigenous population;

(iv) migrants, refugees and displaced persons;

(v) those between 10 and 15 years of age who are not covered by the formal education system because no service exists;

(b) Strengthening of the inter-institutional coordination machinery at national, regional and local level;

(c) Joint planning of the post-literacy process by the sectors involved;

(d) Qualification of 70% of those enrolled in the post-literacy stages during the period 1992-2000;

(e) Promotion of the enrolment of 50% of the post-literacy group in various vocational training programmes run by organizations, thereby enabling them to improve their quality of life.

Illiteracy 1990
(Population over 15 years of age)

Population in general			
Rural	Urban	Men	Women
78.36%	21.64%	45%	55%

Population by ethnic group

Ladino	Mayan
39%	61%

Literate and illiterate populations
(by Department, 1993)

Department	Literate (%)	Illiterate (%)
Guatemala	85.9	14.1
Sacatepéquez	75.8	24.2
Zacapa	70.1	29.9
El Petén	63.3	36.7
Quetzaltenango	63.1	36.9
Santa Rosa	59.9	40.1
Escuintla	59.7	40.3
Jalapa	57.7	42.3
Retalhuleu	57.5	42.5
Chimaltenango	52.7	47.3
El Progreso	52,5	47.5
Suchiteoéquez	52.1	47.9
Jutiapa	51.4	48.6
Totonicapán	51.0	49.0
Izabal	50.4	49.6
Sololá	48.4	51.6
San Marcos	46.1	53.9
Huehuetenango	45.8	54.2
Baja Verapaz	43.1	56.9
Chiquimula	42.2	57.8
El Quiché	36.3	63.7
Alta Verapaz	26.9	73.1

Population taught to read and write

Year	Number
1991	24,290
1992	40,548
1993	69,282
Total	134,120

(It is hoped that by the end of 1994 a total of 225,575 persons will have been taught to read and write.)

Family education centres for development (NUFED)

40. The family education centres for development began work in 1978 in the village of San José Chirijuyu, municipality of Tecpan Guatemala, Chimaltenango, as a result of the agreement signed between the Guatemalan Ministry of Education and the French Embassy in Guatemala.

41. The NUFED are educational centres whose fundamental purpose is to provide young people in rural areas who have completed primary schooling with general training based on the needs, problems and concerns of the population, together with vocational instruction. They also receive training equivalent to the three years of the basic secondary cycle.

42. The general objectives of the NUFED are:

(a) To enable young people in rural areas to participate consciously in the local development process through a methodology which allows them to reflect on their situation with respect to the family and the community and to take action to improve it;

(b) To facilitate and support thoughtful analyses of the young in order to promote local development activities and projects with community participation;

(c) To obtain the active and systematic participation of parents in the process of drawing up and developing the curricula for their children's education, as a function of their own experience combined with modern technology transferred by the instructors and other specialists;

(d) To offer the country a new kind of education which combines the formal and informal systems for the benefit of Guatemalan youth and the rural family;

(e) To encourage greater interest in agriculture and study among young people in rural areas, thereby preventing an increase in the already high levels of migration from the country to the cities.

43. Eight NUFED centres, distributed as follows, are currently operating in Guatemala:

1. San José Chirijuyu, Tecpan Guatemala, Chimaltenango
2. Sacala, Las Lomas, San Martin Jilotepeque, Chimaltenango
3. Ojer Caibal, San José Poaquil, Chimaltenango
4. Tulumajillo, San Agustin Acasaguastlan, El Progreso
5. Cuyuta, Masagua, Escuintla
6. San José Chicalquix, San Carlos Sija, Quetzaltenango
7. Los Horcones, Atescatempa, Jutiapa
8. Patzun, Chimaltenango

Mayan Documentation and Research Centre (CEDIM)

44. The Mayan Documentation and Research Centre is a private non-profit service institution which began operating in 1990. Organized and managed by Mayans, it is interested in documenting, investigating and disseminating various currents of thought on ethnic questions of the cultural, social and economic development of the Mayan people. Its objectives are:

(a) To collect documentation on the Mayans and other indigenous peoples of America;

(b) To preserve the historic memory of the Mayan people;

(c) To contribute to the dissemination of knowledge concerning the historical and human rights of the Mayan people;

(d) To contribute to knowledge of the ethnic realities of Guatemala and of the native peoples of the continent;

(e) To promote the spiritual, cultural and scientific development of the Mayan people and the Ladino people through study and research.

45. CEDIM:

(a) Provides references, extracts and other data relating to documents containing information about Mayan culture and other ethnic questions concerning the continent;

(b) Conducts scientific studies and research in connection with phenomena relating to the Mayan people;

(c) Prepares and publishes monographs on Mayan sciences, art, technology, history, religion, education and culture;

(d) Organizes and conducts studies, conferences, meetings, congresses, seminars and exhibitions of a scientific nature;

(e) Provides documentation and information for educational institutions and Mayan development organizations;

(f) Furthers the advancement of Mayan women through university grants;

(g) Promotes the Mayan schools being set up in various regions of the country by providing technical and administrative advice.

Other institutions

46. The University of San Carlos de Guatemala includes the Language Learning Centre (CALUSAC), which for years has been giving courses in kiché and kakchiquel, and the Folklore Study Centre (CEFOL), which for some time has been engaged in studying Mayan folklore. Moreover, in 1988, the School of Anthropology and the Research Department began holding seminars on ethnic questions and, over the course of time, these have turned into forums for the exchange of ideas on the ethnic population of Guatemala and the problems of minorities.

47. Mariano Galvez University offers two courses which could help with the training of students of the Mayan languages, one in linguistics and the other in socio-linguistics. The official review of the School of Linguistics regularly publishes studies of the Mayan languages.

48. Rafael Landivar University has a Mayan language and literature programme which was first introduced in 1970. Kiché, kakchiquel, mam, quekchi, achi, pocoman and kanjobal are all taught. In addition, under the Programme for the Integral Development of the Mayan People (PRODIPMA), it is proposed to offer grants for various courses to between 650 and 700 Mayan youngsters.

49. The Ixchel Museum has been featuring and making a serious academic study of the traditional native costumes of Guatemala.

50. The Santiago Institute is dedicated to the education of the indigenous young. Its study programme is based on Mayan culture.

51. Since before 1980, the Guatemalan Broadcast Education Institute has been providing adult education by radio. Programmes are broadcast in the quekchi, quiché, kakchiquel, ixil, pocoman and awakateka languages. There is a daily radio programme called "Mayab Winak" for people of Mayan origin.

52. The Francisco Marroquin Language Project produces grammars, dictionaries and first readers in the Mayan languages, in addition to making translations and studies of the language situation in the Mayan-speaking regions. It also gives courses in the Mayan languages.

53. The Permanent Seminar for Mayan Studies has arranged lectures, courses and congresses on aspects of the real life of the Mayans of today. Its basic philosophy is that Mayans and Ladinos should have equal rights and opportunities.

54. There are various education centres, organized by Mayan parents, whose main objective is to prepare the children to become citizens of a multi-ethnic country, but on the basis of their own culture. These centres include:

Kajib Nob, in Momostenango, Totonicapan (kiché);

Luz del Saber, in Patzun, Chimaltenango (kakchiquel);

Colegio Maya, in Palin, Escuintla (pocoman);

Colegio Maya de San Luis Jilotepeque, Jalapa (pocoman);

Colegio Maya de Comitancillo, San Marcos (mam);

Colegio Maya de Cabrican, San Marcos (mam).

55. In the Congress of the Republic there are 30 congressional committees, one of which is the Indigenous Community Committee.

56. Similarly, among the 116 members of Congress there are 5 of Mayan ancestry. These do not necessarily represent the interests of the Mayan people, but, on the contrary, defend the interests of the party which nominated them.

D. Housing situation

57. In 1990, there was a housing shortage amounting, in total, to 861,000 dwelling units.

58. On the basis of the projected population growth, it is estimated that every year 81,973 housing requirements are generated, of which 63.4% are for new housing and 36.6% for repairs. To alleviate this situation, the Government is redirecting its activities with a view to offering a realistic solution to the problem and improving the provision of basic services.

59. Housing policy is focussed on the following aspects:

(a) Facilitation of individual efforts to obtain housing by regularizing title deeds;

(b) Adoption of a comprehensive approach for the purpose of improving human settlements and formulation of specific programmes for dealing with housing problems, including in the informal sector;

(c) Concentration of State support on low-income groups through explicit and transparent subsidies granted directly to the beneficiaries;

(d) Precedence for low-cost solutions and self-help programmes;

(e) Encouragement of alternative building technologies;

(f) Elimination of counterproductive procedures and regulations;

(g) Promotion of the development of long-term financing for housing;

(h) Support for the initiatives launched by local authorities, non-governmental organizations (NGOs) and the organized community.

E. Peasant Movements and Indigenous Organizations*

60. The organizational structure of the majority of the movements working on behalf of the population of Mayan ancestry is simple, minimal, specific and schematic. In most cases, there is a secretary general or the like to represent the organization, a treasurer to keep the books, a secretary to record the minutes, and someone, or possibly a committee with two or three members, responsible for training.

61. However, when problems of concern to the Mayan population are being discussed, it has been found possible to bring together as many as 10,000 people, as at the second continental meeting in Quetzaltenango, when the indigenous organizations represented held a rally attended by at least that number. Indeed, on some occasions the peasant movements which have organized public meetings have attracted more than 12,000.

62. This points up an obvious fact, namely that the indigenous movements are élite groups, although on occasion they are able to call up and coordinate large bodies of people, and, moreover, the leadership is élitist and minimal, though in general it is soundly, efficiently and rationally organized. These are organizations for the masses rather than mass organizations. In short, the social movements of this population are characterized by an élite which conceives, plans, implements and arranges activities occasionally emanating from mass meetings or general assemblies. The latter are sometimes informed of the

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* A list of indigenous organizations is available for consultation in the Secretariat's files.

results, but in most cases the decisions remain recorded in the minutes or in the memories of the leaders and forgotten by or unknown to the majority of the members.

63. For example, individualism often induces the members to act on their own account, over the head of the organization, to plan activities without coordinating them and to seek personal acclaim. Egoism attributes the successes of the organization to the actions of individuals, while amateurish enthusiasm often gives priority to easy but inappropriate action which frequently leads to the break-up or disappearance of the movement. At the same time, anarchism reveals weak or poor control over the movement's activities, signifying the duplication or multiplication of disorganized effort, and in the presence of these attitudes it is often possible to observe a state of paralysis which affects the mass of sympathisers and collaborators who, being unable to participate because inhibited by the "leadership" of the élite, restrict themselves to "participating by observing" or often simply to observing without participating. Other prevailing ills are sectarianism (the result of taking dogmatic positions which leave no room for opposition to the decisions of the élite) and, above all, the frequent insistence on self-sufficiency expressed in sayings such as "only Indians can solve Indian problems" or "the Ladinos don't understand the problems of the Indians".

64. These defects, ills or symptoms of ideological behaviour bring out another feature typical of the present state of the indigenous movements: the lack of a stable, unified, recognized leadership. In fact, each organization has its own leadership, each movement forming around one or more individuals who then attract others, but only at the local level. Occasionally, in some rural communities (with three or four thousand people) two movements which ignore or oppose each other may spring up, thereby splitting the indigenous movement as a whole. In larger communities, four or five organizations with similar positions may emerge, fragmenting local support and leaving the members unable to unite and accept a single leadership. This lack of unity is attributable precisely to the predominance of individualism within these organizations.

65. There follows a more detailed description of some carefully chosen organizations, selected not at random but because they are considered to typify various of the above-mentioned fundamental characteristics present in the majority of Guatemala's indigenous organizations in general.

Peasant Unity Committee (CUC)

66. In its choice of title, the CUC defines itself not as a peasant federation or union but as a "committee" and, according to its manifesto, all it requires of its members is total commitment, with integrity, determination, sacrifice and steadfastness, to the common cause of defending the interests of agricultural workers, and readiness to fight for the interests of other exploited groups in Guatemala.

67. The CUC began to organize in 1976, but it was not until 27 April 1978 that it emerged as an independent body, immediately after the appearance of internal disagreements within the National Central of Workers (CNT), given the latter's tendency to "reformism" and its distinctive mode of operation, contrary to the ideology of its own parent organization, the Latin American Central of Workers (CLAT).

68. The members of the organization are indigenous peasants, mainly from the departments of El Quiché, Huehuetenango, Quetzaltenango, Solola, Totonicapan, Suchitepéquez and San Marcos, although it has sympathisers in other departments such as Izabal, Las Verapaces and Escuintla.

69. Almost all its members are of indigenous stock with Ladinos, all peasants, representing (according to the CUC's own leaders) approximately 10% of the membership. The "Ladino" members (as they call themselves) are actually natives of the Altiplano who for 15 or 20 years or more have been permanently settled in the southern coastal region of the country as tenant farmers on the cotton, coffee and sugar-cane plantations, where initially they formed part of the gangs of seasonal labourers. Regardless of the uncertainty of this socio-cultural distinction, the "Ladino" members graphically express not only the demographic composition of the CUC but also one of the objectives of the organization which argues that both Ladinos and indigenas should join it, as peasants belonging to a social sector uniformly exploited by the landowners.

70. The founders of the CUC developed their organizational activities in the guise of parishioners belonging to Catholic Action, one of the proselytizing activities undertaken at national level by the church, although they also sheltered behind bible study groups in the case of sympathisers or comrades of the Protestant faith. In both cases, the peasants' initial organizational meetings were concerned with the socio-economic problems they faced, not with their religious convictions.

71. On the other hand, although the internal organization of the CUC initially resembled the organizational models prevailing in the cooperatives which flourished in the region, El Quiché, where it first emerged, it was later modified as a result of adaptation to the forms peculiar to the traditional culture of its member ethnic groups.

72. In any event, with respect to their emergence (both origin and motivation), mode of organization and, in some cases, the formulation of objectives, the CUC model was the inspiration for certain other peasant-indigenous organizations, even though their social practice as a social movement may have differed from that of the CUC. From this one can deduce the importance of the CUC as an organizational model for the peasant social movements in the indigenous sector as a whole.

73. It is also necessary to add that the CUC was one of the first peasant organizations to be established (effectively in 1978) and has been one of the most active in defending itself, one of the most belligerent and one of those that has lasted longest without breaking up and disappearing, even though the present infighting provoked by ideological disagreements indicates that a serious rupture may lie ahead for the organization. Why then, after almost 15 years of existence, is the CUC still able to keep its place among the ranks of the country's peasant movements? Presumably because of its claiming land and proclaiming peasant unity.

National Coordinating Committee of Guatemalan Widows (CONAVIGUA)

74. This organization emerged from various groups which mutually support each other's claims, these being directed, according to one of its objectives, essentially towards the "unity and dignity of women". It was set up

predominantly and basically for indigenous women, widows and orphans, but also in general for those who have lost a family member in the course of the armed conflict taking place in Guatemala, particularly in the north-western departments of the country.

75. The objectives of the National Coordinating Committee of Guatemalan Widows include, for example, alleviating the distress of those families which have lost members, by providing food, medicine, accommodation and clothing for the survivors in order to meet their most urgent needs and also by providing a minimum of education for orphaned children.

76. Since its members come mostly from the Departments of Quetzaltenango, El Quiché, Huehuetenango, Solola, Totonicapan, Chimaltenango and Guatemala, it is a genuinely rural, indigenous and peasant organization with a stable and well coordinated organization which appeared on the national scene in September 1988 and is currently coordinating its activities with those of the other popular organizations to which it belongs, such as the Union of Trade Union and People's Action (UASP) and the 500 Years Movement.

77. As the national "coordinating" committee of Guatemalan widows, it directs the activities of similar groups in the above-mentioned departments, on the basis of organizational models with "representation" (in its own words) in municipal and departmental centres and also at village and municipal canton level, which, by demonstrating the breadth of its field of action, also suggests a solid organization, considering the steady rhythm of its activities.

78. It can be said that CONAVIGUA is an organization conceived, organized, guided and run by women, all of them indigenous peasants, even though some women identified as Ladinos, but also widows, may have drawn close to it.

The Ranujel Junam Ethnic Communities Council (CERJ)

79. This is a Quiché organization established in August 1988, at the same time as CONAVIGUA, as the Ranujel Junam Ethnic Communities Council under the banner of "respect for the indigenous cultural identity". The first impression given by CERJ is that of a one-man movement since its best known leader is the only member of the group. It is one of the indigenous peasant organizations that best typifies and characterizes the particular forms of leadership of the indigenous movements. Apparently, the ethnic "community council" is nothing more than he who represents it.

The Mayan Coordinating Committee Majaw'il Q'ij and the National 500 Year Movement (MN-500)

80. Both movements are of recent origin (1990 and 1991, respectively) and both are well organized, certainly among the best organized. The former is currently suffering from internal disputes, perhaps due to the dynamics of its own growth, while the latter is in the process of being reformed because of the nature of the movements which promoted its initial organization. In fact, it was set up in connection with the events surrounding the quincentenary of the arrival of the Europeans on the American continent on 12 October 1492 and began to disappear as such in the immediate aftermath of those events, being transformed, as a product of its own evolution and development, into the National Indigenous and Peasant Coordinating Committee (CONIC) at the end of October 1992. As products of the

activities programmed and developed in connection with the quincentenary, the two organizations generally work together, as well as with other organizations with which they join forces: UASP, CUC, CONAVIGUA, CONDEG, etc.

81. The Majaw'il Q'ij, New Dawn in the Mam language, resulted from the coming together of members of various ethnic groups (Ladinos included) and proclaims its intention of fighting for the rights of the indigenous peoples. Like those of many other indigenous movements, its leadership, mainly women, expresses concerns common to all Guatemala's ethnic groups, in particular the concern that all should unite in the struggle for social equality, banding together at the request of other ethnic groups at the continental level. The Majaw'il Q'ij embraces a group of a dozen or so organizations such as the Representatives of Mayan Priests, the Northern Union of Peasants, the Peasant Committee of the Altiplano, the Southern Peasant Workers Union and the Farmers Association. Against the general background of Guatemala's indigenous peasant movements, the Coordinating Committee Majaw'il Q'ij stands out as more of a specialized "arm" than an independent organization, considering its links and joint activities with other organizations such as the National 500 Year Movement, UASP, CUC, CONAVIGUA and CONDEG.

82. The National Movement 500 Years of Indigenous, Black and Popular Resistance sprang from the Majaw'il Q'ij, being its "spokesman and the reflection of our feelings and bringing news of the Continental Campaign" launched in early 1989. The primary objective of the MN-500 was to unite the indigenous movement around the quincentenary event and it could be said that it succeeded in founding the National Indigenous and Peasant Coordinating Committee.

National Council of Displaced Persons of Guatemala (CONDEG)

83. CONDEG was set up as a result of hundreds of Guatemalans having been displaced from their homes, some because they feared for their safety, others for economic reasons. The organization was founded on 3 September 1989.

> "All or most displaced persons, men and women, children and old people, participate in CONDEG, without distinction as to race or religion, and we see to it that our views are known ... but we are aware that to achieve our objectives we must receive all possible support from the other popular, democratic, progressive and religious organizations ... we are therefore proclaiming our objectives which are to insist on our right to organize freely, to recover our individual identity ... to reorganize our communities of origin in complete freedom and to ensure that our ethnic, cultural and religious identity is respected ... that human rights are respected and to obtain humanitarian aid for all the displaced from the institutions which identify with our cause."

Comunidades de Poblacion en Resistencia de la Sierra y del Ixcan (CPR-S/1)

84. On 27 and 28 September, there appeared in the national newspapers the "Declaration of the First Assembly of the Comunidades de Poblacion en Resistencia de la Sierra" which explained that at a general assembly held earlier, on 24 March, the group had decided to make itself known to the public. On 10 October of that year, in a paid advertisement published in the local press, the Ad Hoc Committee for Aid to Returnees (CEAR), an official government

body, addressed the CPR de la Sierra, pointing out that "the Government has provided basic support for the displaced".

II. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION

Article 2

85. The internal legislation relating to Article 2 of the Convention is as follows.

(a) The Constitution

"Article 4. Freedom and equality. In Guatemala all human beings are free and equal in dignity and in rights. Men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition which impairs his dignity. Human beings should behave fraternally towards each other.

...

Article 66. Protection of ethnic groups. Guatemala is made up of different ethnic groups, including indigenous groups of Mayan ancestry. The State recognises, respects and promotes their ways of life, customs, traditions and forms of society, languages and dialects, and the wearing of indigenous costumes by men and women.

Article 67. Protection of indigenous land and of indigenous agricultural cooperatives. Land belonging to indigenous cooperatives, communities or any other form of communal or collective agrarian landholding, as well as family property and low-cost housing, shall enjoy the special protection of the State and preferential credit and technical assistance which will guarantee their legal possession and development, in order to ensure a better quality of life for all the inhabitants.

Indigenous and other communities holding land which has historically belonged to them and which they have traditionally administered in a special manner shall maintain this system.

Article 68. Land for indigenous communities. The State shall, under special programmes and appropriate legislation, make State land available to indigenous communities which need it for their development.

Article 69. Movement of workers and their protection. Labour activities involving the movement of workers outside their communities shall be the subject of protection and of legislation which will ensure adequate provision for health, safety and social welfare and will prevent the payment of wages which are not in conformity with the law, the disintegration of such communities and, in general, any discriminatory treatment.

Article 70. Specific law. The questions dealt with in this section shall be regulated by an Act.

...

Article 102. Minimum social rights under labour legislation. The following are the minimum social rights forming the basis of labour legislation and action by tribunals and public authorities:

...

(c) equal pay for equal work performed under the same conditions, with equal efficiency and equal seniority;

...

(k) protection of women workers and regulation of the conditions in which they are to be employed; no distinction must be made for purposes of employment between married and single women. In the case of women workers, the law shall regulate the protection to be given to maternity, and no woman worker shall be required to do any work necessitating physical effort that might endanger her pregnancy ...

(l) minors under 14 years of age may not be employed in any kind of work, except in the cases provided by law ... Workers over 60 years of age shall be treated as befits their age;

(m) protection and encouragement of work by the blind, the handicapped and persons with physical, mental or sensory impairment;

...

(q) the right of workers freely to form and join trade unions. They may exercise this right without any discrimination and without having to obtain prior authorization, the sole requirement being that they fulfil the conditions established by law.

(t) the State shall become a party to international and regional conventions and treaties on labour matters which grant workers better protection or conditions."

(b) Migration Act (Decree-Law No. 22-86)

"Article 1. Purpose. The purpose of this Act is to regulate the relations between the State of Guatemala and aliens when, for any reason, they are present on the national territory, matters relating to the immigration and emigration of both Guatemalans and aliens, and the organization and administrative procedures necessary to ensure the effective treatment of questions of migration and alien control.

...

Article 11. Aliens. Aliens are those who do not meet the conditions for Guatemalan nationals in accordance with the law.

Article 12. Classes of aliens. For the purposes of this Act, aliens may be:

(a) Transients

(b) Tourists

(c) Immigrants

(d) Residents

(e) Asylum seekers

(f) Refugees

(g) Stateless persons.

...

Article 41. Rights of aliens. Aliens are guaranteed the rights of liberty, equality and security of the person, the right to honour and reputation and the right to their property, in accordance with the provisions of the Constitution, subject to the exceptions established by law."

(c) Urban and Rural Development Council Act (Congressional Decree No. 52-87)

"Article 1. Description. The Urban and Rural Development Councils are being set up to organize and coordinate the public services through the formulation of urban and rural development and land-use planning policies and to promote the organization of the population and its participation in the integral development of the country by establishing a National System of Urban and Rural Development Councils.

...

Article 4. Functions of the National Council. The functions of the National Urban and Rural Development Council are as follows:

(a) To organize and coordinate the public services;

(b) To formulate urban and rural development and land-use planning policies. Where territorial boundaries are affected, the competent authority shall be the Congress of the Republic;

(c) To promote national economic, social and cultural development;

(d) To promote the effective participation of the population in the identification and solution of its problems;

(e) To promote and coordinate the system of Urban and Rural Development Councils;

(f) Regularly to evaluate the implementation of national development plans and programmes and to propose remedial measures to ensure the achievement of their goals and objectives;

(g) To monitor the organization and coordination of the public services to ensure the fulfilment of the national development plans and programmes;

(h) To promote the decentralization and devolution of the public services.

...

Article 6. Functions of the Regional Council. The functions of the Regional Urban and Rural Development Council are as follows:

(a) To promote the economic, social and cultural development of the region;

(b) To promote the effective participation of the population in the identification and solution of its problems;

(c) To promote and coordinate the departmental councils which form part of its region;

(d) To propose regional development plans, programmes and projects;

(e) To establish the financing requirements for the implementation of its regional development plans and programmes;

(f) Regularly to evaluate the implementation of its regional development plans, programmes and projects and to suggest remedial measures to ensure the achievement of their goals and objectives;

(g) To follow up regional development programmes and projects and to ensure that the activities of the public services are coordinated.

...

Article 8. Functions of the Departmental Council. The functions of the Departmental Council are as follows:

(a) To promote the economic, social and cultural development of the department;

(b) To promote the effective participation of the population in the identification and solution of its problems;

(c) To propose departmental development plans, programmes and projects;

(d) To establish the financing requirements for the implementation of its departmental development plans, programmes and projects;

(e) Regularly to evaluate the implementation of its departmental development plans, programmes and projects and to suggest the measures necessary to achieve their goals and objectives;

(f) To follow up departmental development programmes and projects and to ensure that the activities of the public services are coordinated.

...

Article 10. Functions of the Municipal Council. Without prejudice to its own laws, the Municipal Council shall have the following functions:

(a) To promote the economic, social and cultural development of the municipality;

(b) To prepare, approve and execute local urban and rural development plans, in coordination with the National Development Plan;

(c) To promote the participation of the inhabitants in the identification of local problems, the formulation of proposals for their solution and their prioritization for implementation;

(d) To develop a collective sense of participation at the various political and administrative levels, especially in the Urban and Rural Development Councils established under the Constitution;

(e) To identify and make an inventory of the needs of the municipality and to determine the corresponding priorities for formulating plans, programmes and projects;

(f) To propose to the Departmental Council the cooperation measures necessary for the implementation of programmes and projects when its own resources are insufficient to carry them out;

(g) To recognise and register legally constituted Local Development Councils organized within its jurisdiction;

(h) Such other functions as may pertain to the autonomy of the municipality or may derive from the application of other laws."

(d) Regulations of the Urban and Rural Development Councils Act (Government Order No. 1041-87)

"Article 1. General definition. The National System of Urban and Rural Development Councils is the group of bodies whose interrelated principles, rules and procedures have as their objective the organization and coordination of the public services, the formulation of urban and

rural development and land-use planning policies and the organization and participation of the population to achieve the integral development of the country.

...

Article 4. General activities. In order to perform the functions assigned to it under the Act, the National System of Urban and Rural Development Councils shall carry out the following activities:

(a) Encourage and strengthen the permanent participation of the population in the various stages of the development process, through coordination between the public and private sectors;

(b) Strengthen within the population the ability to identify and prioritize its needs, to propose possible solutions to its problems and to participate in their implementation;

(c) Promote the country's integral development through the identification, formulation and implementation of development programmes and projects at the regional, departmental, municipal and local levels.

...

Article 17. Definition. The National Urban and Rural Development Council is a collegiate and representative body, the highest authority of the National System of Urban and Rural Development Councils, responsible for organizing and coordinating the public services and formulating urban and rural development and land-use planning policies.

...

Article 19. Activities. In order to perform the functions assigned to it under the Act, the National Urban and Rural Development Council shall carry out the following activities:

(a) Issue the directives and supplementary provisions necessary to regulate the operation of the National Urban and Rural Development Council System at its various levels;

(b) Know and study the regional development plans and reconcile them with the national plans;

(c) Set up and operate the machinery necessary to incorporate the proposals for programmes and projects received by the National Urban and Rural Development Council System in the General State Budget of Revenue and Expenditure and in that of the decentralized bodies;

(d) Formulate, coordinate and implement training programmes for those belonging to the various levels of the National Urban and Rural Development Council System;

(e) Determine the site of each of the Regional Councils;

(f) Promote and support the preservation of the environment;

(g) Any other activity which its functions may require, in accordance with the purposes for which it was established.

...

Article 28. Definition. The Regional Urban and Rural Development Council is the collegiate and representative body responsible for promoting and coordinating the development process in the region, in accordance with the directives of the National Urban and Rural Development Council and the wishes of the population.

...

Article 30. Activities. In order to perform the functions assigned to it under the Act, the Regional Urban and Rural Development Council shall carry out the following activities:

(a) Issue the directives and supplementary provisions necessary to regulate the operation of the Departmental Councils within its administrative area;

(b) Know and approve the departmental development plans, reconcile them with the regional plans and submit them to the National Council for its information and approval;

(c) Inform the National Urban and Rural Development Council of the progress made with development measures and of any practical problems encountered which cannot be solved at its own level;

(d) Promote and support the preservation of the environment;

(e) Any other activity stemming from its plans and programmes of work.

...

Article 39. Definition. The Departmental Council is the collegiate and representative body responsible for promoting and coordinating the departmental development process, in accordance with the directives issued by the corresponding Regional Urban and Rural Development Council and the wishes of the population.

...

Article 41. In order to perform the functions assigned to it under the Act, the Departmental Council shall carry out the following activities:

(a) Make additional suggestions to improve the functioning of the Municipal Councils and concerning their territorial limits, and provide them with advice at their request;

(b) Know and approve the municipal urban and rural development plans, reconcile them with the departmental plans and submit them to the Regional Council for its information and approval;

(c) Inform the Regional Urban and Rural Development Council of the progress made with development measures, programmes and projects and of any practical problems encountered which cannot be solved at its own level;

(d) Promote and support the preservation of the environment;

(e) Any other activity stemming from its plans and programmes of work.

...

Article 50. Definition. The Municipal Urban and Rural Development Council is the collegiate and representative body responsible for promoting and managing the municipal development process, within the context of the wishes of the population, in coordination with the State development policy.

...

Article 52. Activities. In order to perform the functions assigned to it under the Act, the Municipal Urban and Rural Development Council shall carry out the following activities:

(a) Issue directives and supplementary provisions to regulate the operation of the Local Development Councils within its administrative area;

(b) Know and approve the municipal urban and rural development plan, reconcile it with the requirements and priorities at the local level and submit it to the Departmental Council for approval;

(c) Inform the Departmental Council of the progress made with the development measures, programmes and projects and of any practical problems encountered which cannot be solved at its own level;

(d) Know and rule on the proposals made at meetings with the chairmen of the executive committees of the Local Development Councils;

(e) Encourage inter-institutional cooperation in support of the decisions and measures taken by the Council;

(f) Promote and support the preservation of the environment;

(g) Any other activity stemming from its plans and programmes.

...

Article 61. Definition. The Local Development Council is the basic collegiate and representative body of the National Urban and Rural Development Council System responsible for promoting, supervising and coordinating the organized, active and permanent participation of the population in the local development process.

...

Article 63. Activities. In addition to those stemming from its functions, the Local Development Council shall carry out the following activities:

(a) Join forces with other Local Development Councils to solve common problems;

(b) Inform the Municipal Urban and Rural Development Council of the progress made with development measures, programmes and projects and of any practical problems encountered which cannot be solved at its own level;

(c) Ensure that the locally available renewable and non-renewable natural resources are preserved and rationally employed."

(e) Labour Code

"Article 14 bis. All discrimination based on race, religion, political beliefs or economic situation in welfare, educational, cultural, leisure or commercial establishments for the use or benefit of workers, in privately owned enterprises or workplaces or in such enterprises or workplaces set up by the State for workers in general, shall be prohibited.

No worker shall be refused admittance to any of the places referred to in this section because of the wages he earns or the post he occupies."

Commentary (Article 2)

86. Article 2 of the Convention coincides with the Guatemalan internal legislation cited above which guarantees due compliance with sub-paragraphs (a), (b), (c), (d) and (e) of Article 2.

87. Thus, in Guatemala, in accordance with the internal legislation, no form of racial discrimination may be practised against persons, groups of persons or institutions. International human rights legislation, which takes precedence under the Constitution, is also respected.

88. Through the Congress, Guatemala is currently promoting laws tending to prevent any act which might be interpreted as discriminatory while opposing initiatives in favour of laws which might foster or encourage racial discrimination.

89. However, any natural or legal person who considers that his rights have been infringed may have recourse, without any restriction, to the relevant bodies in order to have those rights recognised and respected, in conformity with the legislation cited above.

90. Furthermore, the intentions of the State of Guatemala with regard to respect for and observance of human rights are also clearly expressed in the comprehensive agreement on the subject, signed in Mexico City on 29 March 1994, between the Government of the Republic of Guatemala and the National Revolutionary United Front, which reads:

"1. General undertaking on human rights

1.1. The Government of the Republic of Guatemala reaffirms its adherence to the principles and rules guaranteeing and protecting the full observance of human rights and its political intention to have them respected.

1.2. The Government of the Republic of Guatemala will continue to promote all measures designed to further and improve the provisions and mechanisms for the protection of human rights ..."

Article 3

91. The internal legislation relating to Article 3 of the Convention is as follows:

The Constitution

"Article 4. Freedom and equality. In Guatemala all human beings are free and equal in dignity and in rights. Men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition which impairs his dignity. Human beings should behave fraternally towards each other.

...

Article 45. Action against offenders and legitimacy of resistance. The right to take proceedings against violators of human rights shall be a public right and may be exercised simply by lodging a complaint, without bond or formality of any kind. Resistance by the people to protect and defend the rights and guarantees set forth in the Constitution shall be legitimate.

Article 46. Primacy of international law. It is established as a general principle that, in matters of human rights, treaties and conventions accepted and ratified by Guatemala shall take precedence over internal law."

Commentary (Article 3)

92. Notwithstanding the fact that, in Guatemala, in accordance with the Constitution, all human beings are born equal in dignity and rights, the majority of the population is deprived of access to the minimum essential services required for a decent life, because central government lacks the resources that would enable it to provide such services.

93. However, in its Government Plan 1994-1995, the Office of the President of the Republic of Guatemala sets out the Government's commitments with respect to the political integration of society, respect for cultural traditions, sustainability and social justice. These commitments involve the strengthening of democracy and the rule of law, combatting poverty, the transformation of the productive sector, the preservation of the environment, the rational use of renewable natural resources and institutional modernization.

94. Doctrines of superiority or discrimination are prohibited in Guatemala as morally condemnable, socially unjust and an infringement of the human rights of the individual. In this connection, Guatemala is aware that racial discrimination is a scourge which must be eradicated from its territory, being a deliberate and utterly abominable affront to the conscience and dignity of mankind.

95. Consequently, the State of Guatemala, respectful of the observance of the rights of the individual, officially reaffirms that:

(a) Every people and human group has contributed to the advancement of the civilization and cultures which constitute the common heritage of mankind.

(b) Any form of discrimination constitutes a violation of basic human rights.

(c) Those who help to maintain the system of apartheid are accomplices in the perpetuation of that crime.

(d) The banning of racism and racial discrimination by the law must be accompanied by a vigorous effort to ensure equality in the economic, social and cultural spheres and, in particular, special affirmative action programmes must be organized to combat violations of human rights.

(e) Apartheid, racism and systematic racial discrimination are obvious violations of human rights resulting from and leading to gross inequalities in the political and economic spheres as well as in education, health, nutrition, housing, prospects for employment and cultural development. Accordingly, the action required to combat such policies and practices must include measures at the national, regional and international levels to improve the political, economic, social and cultural living conditions for men and women of all nations.

(f) Full use must therefore be made of national, regional and international educational resources to foster mutual understanding among all human beings and to demonstrate and teach the scientific grounds for equality and the value of cultural diversity, with a view to destroying the basis for racist activities and practices.

Article 4

96. The internal legislation relating to Article 4 of the Convention is as follows:

(a) The Constitution

"Article 1. Protection of the individual. The State of Guatemala is constituted to protect the individual and the family; its supreme aim is the achievement of the common good.

Article 2. Duties of the State. It is the duty of the State to guarantee, for the inhabitants of the Republic, life, liberty, justice, security, peace and the full development of the individual.

...

Article 4. Freedom and equality. In Guatemala all human beings are free and equal in dignity and in rights. Men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition which impairs his dignity. Human beings must behave fraternally towards each other.

Article 5. Freedom of action. Everyone has the right to do whatever the law does not prohibit; no one shall be obliged to carry out orders which are not based on and issued in accordance with the law. No one may be persecuted or molested for his opinions or for acts which do not involve a breach of the law.

...

Article 33. Right of assembly and demonstration. The right of peaceful unarmed assembly is recognized.

The rights of assembly and public demonstration may not be restricted, limited or curtailed and the law shall regulate these rights only for the purpose of guaranteeing public order.

Religious demonstrations outside churches are permitted and are governed by law.

For the exercise of these rights, it shall be sufficient for the organizers to give prior notice to the competent authority.

No one shall be required to join or be a member of a group or association established for self-defence or a similar purpose. The case of professional associations shall constitute an exception to this rule.

...

Article 44. Rights inherent in the human person. The rights and guarantees granted by the Constitution do not exclude others which, although not expressly referred to therein, are inherent in the human person.

The interests of society shall take precedence over private interests.

Laws, governmental orders and orders of any other kind which diminish, restrict or distort rights guaranteed by the Constitution shall be null and void ipso jure.

Article 45. Action against offenders and legitimacy of resistance. The right to take proceedings against violators of human rights shall be a public right and may be exercised simply by lodging a complaint, without bond or formality of any kind. Resistance by the people to protect and defend the rights and guarantees set forth in the Constitution shall be legitimate.

Article 46. Primacy of international law. It is established as a general principle that, in matters of human rights, treaties and conventions accepted and ratified by Guatemala shall take precedence over internal law.

...

Article 155. Responsibility for violation of the law. When in the performance of his duties a State dignitary, official or worker violates the law to the detriment of an individual, the State and the State institution in which he serves shall be jointly and severally liable for the damage and injury caused.

Civil liability actions may be brought against public officials and employees so long as the time allowed under the Statute of Limitations, which shall be 20 years, has not run out.

In this case, criminal liability shall be extinguished at the end of twice the period specified by the law for the prescription of punishment.

Neither Guatemalans nor aliens may claim compensation from the State for damage or injury caused by armed movements or civil disturbances.

Article 156. No obligation to carry out illegal orders. No public, civilian or military official or employee shall be obligated to carry out orders that are manifestly illegal or that involve the commission of an offence."

(b) Penal Code (Congressional Decree No. 17-73)

"Article 4. (Territoriality of the Penal Code.) Except as otherwise stipulated in international treaties, this Code shall apply to anyone committing a crime or misdemeanour within the territory of the Republic or in places or means of transport subject to its jurisdiction.

...

Article 387. (Sedition.) Anyone who, without repudiating the authority of the constituted Government, rises up, publicly or riotously, to achieve by force or violence any of the following objectives: ...

3. The commission of acts of hatred or revenge against the person or property of any authority or its agents; 4. The commission, for political or social purposes, of any act of coercion against private individuals or a social class or against the property of the State or any public entity.

...

Article 395. (Advocacy of a crime.) Anyone publicly advocating a crime or extolling a person convicted of one shall be liable to a fine of from one hundred to one thousand quetzals.

Article 396. (Unlawful associations.) Anyone promoting the organization or operation of associations which act in concert with or in subordination to international organizations advocating the Communist ideology or any other totalitarian system, or are formed for the purpose of committing crimes, or take part in crimes shall be liable to from two to six years' imprisonment.

Article 397. (Unlawful assembly and demonstration.) Anyone organizing or promoting an assembly or public demonstration in infringement of the provisions which regulate that right or participating in such an assembly or demonstration shall be liable to from six months' to two years' imprisonment.

...

Article 418. (Abuse of authority.) Public officials or employees who, to the detriment of the government or private individuals, abuse their office or responsibilities by ordering or committing any arbitrary or unlawful act not specifically covered by the (Penal) Code shall be liable to from one to three years' imprisonment.

Public officials or employees who use unlawful or unnecessary coercion shall be liable to the same punishment.

Article 423. (Decisions which violate the Constitution.) Public officials or employees who issue decisions or orders contrary to express provisions of the Constitution, or knowingly implement decisions or orders of this nature issued by another official, or fail to apply the laws for the application of which they are responsible, shall be liable to from one to two years' imprisonment and a fine of from two hundred to two thousand quetzals."

Commentary (Article 4)

97. It follows from the internal legislation cited above that there is a contradiction between the provisions of the Constitution and those of the Penal Code concerning free association and assembly and demonstration. In this respect, the Constitution requires the recognition of the right of peaceful unarmed assembly and, moreover, stipulates that the rights of assembly and public demonstration may not be restricted, limited or curtailed (Article 33). However, according to the Penal Code, anyone promoting the organization or operation of associations which act in concert with or in subordination to international organizations advocating the Communist ideology or any other

totalitarian system, or are formed for the purpose of committing crimes, or take part in crimes shall be liable to from two to six years' imprisonment (Article 396). Likewise, the Penal Code stipulates that anyone organizing or promoting an assembly or public demonstration in infringement of the provisions which regulate that right or participating in such an assembly or demonstration shall be liable to from six months' to two years' imprisonment (Article 397).

98. Thus, the Constitution requires that there be no restriction on the right of association, assembly or demonstration. Accordingly, irrespective of the fact that it is contradicted by the Penal Code, this right is respected within the territory of the State of Guatemala, since it arises from international conventions and treaties approved and signed by the Guatemalan nation.

99. In another context, all forms of discrimination constitute a violation of fundamental human rights. Consequently, government policies based on the theory of ethnic superiority or on ethnically motivated exclusion or hatred are neither pursued nor find any legal support within the territory of the State of Guatemala.

100. It is important to note that the last part of Article 4 of the Constitution stipulates that human beings should behave fraternally towards each other and, in this sense, the State is constantly promoting and implementing policies of reconciliation and understanding among the groups which make up Guatemalan society.

Article 5

Article 5 (a) - The right to equal treatment before the tribunals and all other organs administering justice

101. The internal legislation relating to Article 5 (a) of the Convention is as follows:

(a) The Constitution

"Article 4. Freedom and equality. In Guatemala all human beings are free and equal in dignity and in rights. Men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition which impairs his dignity. Human beings should behave fraternally towards each other.

Article 5. Freedom of action. Everyone has the right to do whatever the law does not prohibit; no one shall be obliged to carry out orders which are not based on and issued in accordance with the law. No one may be persecuted or molested for his opinions or for acts which do not involve a breach of the law.

...

Article 12. Right of defence. The defence of one's person and one's rights is inviolable. No one may be sentenced or deprived of his rights without having been charged, heard and convicted in a lawful trial before a competent and previously established court or tribunal.

No one may be tried by special or secret tribunals or by procedures not lawfully established in advance.

...

Article 14. Presumption of innocence and public nature of court proceedings. Everyone is innocent until judicially declared guilty in a duly enforceable judgment.

The person arrested, the victim, the public prosecutor and the counsel appointed, whether orally or in writing, by those concerned have the right to be acquainted, personally, with all records, documents and proceedings, immediately and without reservation.

...

Article 17. No offence or penalty without prior law. No act or omission shall give rise to a penalty unless it constitutes a punishable offence under previously enacted legislation.

There shall be no imprisonment for debt.

...

Article 19. The penitentiary system. The penitentiary system must aim at the social rehabilitation and reformation of prisoners and their treatment must comply with the following minimum rules:

(a) Prisoners must be treated as human beings; they must not be discriminated against on any grounds nor may they be subjected to cruel treatment, physical, moral or psychological torture, coercion or harassment, labour incompatible with their physical condition, or treatment of a degrading nature. Nor may they be made victims of extortion or subjected to scientific experiments;

(b) They must serve their sentences in places intended for that purpose. Penal institutions shall be civilian in character and staffed by specialized personnel; and

(c) Prisoners shall have the right to communicate, at their request, with their relatives, defence counsel, a chaplain or doctor and, where appropriate, with the diplomatic or consular representative of their country.

Failure to observe any of the rules laid down in this article shall give a prisoner the right to claim from the State compensation for any injury caused and the Supreme Court of Justice shall order his immediate protection.

The State shall create and foster the conditions for full compliance with the provisions of this article.

...

Article 28. Right of petition. The inhabitants of the Republic of Guatemala have the right to address petitions, individually or collectively, to the public authorities and the latter are required to consider them and take a decision upon them according to law.

...

Article 44. Rights inherent in the human person. The rights and guarantees granted by the Constitution do not exclude others which, although not expressly referred to therein, are inherent in the human person.

The interests of society shall take precedence over private interests.

Laws, governmental orders and orders of any other kind which diminish, restrict or distort rights guaranteed by the Constitution shall be null and void ipso jure.

Article 45. Action against offenders and legitimacy of resistance. The right to take proceedings against violators of human rights shall be a public right and may be exercised simply by lodging a complaint, without bond or formality of any kind. Resistance by the people to protect and defend the rights and guarantees set forth in the Constitution shall be legitimate.

....

Article 155. Responsibility for violation of the law. When in the performance of his duties a State dignitary, official or worker violates the law to the detriment of an individual, the State and the State institution in which he serves shall be jointly and severally liable for the damage and injury caused.

Civil liability actions may be brought against public officials and employees so long as the time allowed under the Statute of Limitations, which shall be 20 years, has not run out.

In this case, criminal liability shall be extinguished at the end of twice the period specified by the law for the prescription of punishment.

Neither Guatemalans nor aliens may claim compensation from the State for damage or injury caused by armed movements or civil disturbances."

(b) Act on the Judicial Branch

"Article 1. General rules. The basic provisions of this Act are the general rules of application, interpretation and integration of the Guatemalan legal system.

Article 2. Sources of the law. The legislation is the source of the legal order. It shall be supplemented by the jurisprudence established in accordance with the law.

Custom shall prevail only in the absence of any applicable law, provided that it is not contrary to morality or public order and is authenticated.

...

Article 4. Acts null and void. Acts contrary to mandatory rules and express prohibitions are null and void ipso jure, unless those rules and prohibitions make some other provision for the case of contravention.

Acts done under cover of the wording of a rule with a view to achieving a result prohibited by or contrary to the law shall be deemed to have been done fraudulently and shall not prevent the due application of the rule which they were intended to circumvent.

Article 5. Sphere of application. The rule of law shall extend to anyone, whether a Guatemalan national or an alien, resident or in transit, without prejudice to the provisions of international law accepted by Guatemala, and to the entire territory of the Republic, which includes the soil, the subsoil, the terrestrial maritime zone, the continental shelf, the economic influence zone and the airspace, as defined by legislation and international law.

...

Article 7. Non-retroactivity. The Act shall not have retroactive effect nor shall it affect acquired rights. An exception shall be made in criminal matters in so far as this works to the advantage of the accused.

Procedural laws shall have immediate effect, except as otherwise specified by the law itself.

...

Article 9. Supremacy of the Constitution. The courts of justice shall always observe the principle of the hierarchy of norms and of supremacy of the Constitution over any other law or international treaty, except for treaties or conventions on human rights ratified by Guatemala, which take precedence over internal law.

Provisions which contradict a norm of higher rank are invalid.

...

Article 16. Due process. The defence of one's person and one's rights is inviolable. No one may be judged by a special commission or by special tribunals. No one may be sentenced or deprived of his rights without having been charged, heard and convicted in a lawful trial before a competent and previously established court or tribunal, with due observance of the corresponding formalities and essential guarantees, nor may he be temporarily divested of his rights, except as a result of proceedings which meet the same requirements.

Article 17. Good faith. Rights must be exercised in accordance with the requirements of good faith.

...

Article 36. Time limits upon the validity of the law. Conflicts which result from the application of laws enacted at different times shall be decided in accordance with the following principles:

...

(d) If a new law extends or restricts the conditions necessary to perform certain acts or acquire particular rights, that law shall be applied immediately to all concerned.

(e) Any right acquired under and in conformity with one law shall continue to exist under the rule of another; however, the provisions of the new law shall take precedence with regard to the exercise of the right and the corresponding obligations and with respect to its extinction.

(f) The legal position created under a prior law shall be preserved under the rule of another later law.

...

Article 51. Judicial Branch. In the exercise of the sovereignty delegated by the people, the Judicial Branch dispenses justice in accordance with the Political Constitution of the Republic and the values and principles of the national legal order.

Article 52. Functions of the Judicial Branch. In order that it may achieve its objectives, the Judicial Branch shall not be subject to any form of subordination; it has jurisdictional and administrative functions which must be performed in total independence of any other authority.

...

Article 57. Justice. Justice is dispensed in accordance with the Political Constitution of the Republic and other laws which constitute the national legal order.

The jurisdictional function is exercised with absolute exclusivity by the Supreme Court of Justice and by the other courts established by law which have the power to judge and enforce judgments. Justice is free and equal for all.

...

Article 63. Public character. The acts and proceedings of the courts are public, except in those cases in which by judicial order or for reasons of morality or public security they must be kept confidential. The decision shall be made by the judge in very special cases and on his strict responsibility. In any case, the parties and their counsel have the

right to be present at all the acts and proceedings concerned and to make appropriate objections and protests and, in general, to be acquainted with their content.

Article 64. In any court hearing, the parties and their counsel may present oral arguments. Moreover, they may make submissions in writing.

...

Article 74. Jurisdiction. The Supreme Court of Justice has jurisdiction throughout the Republic to try cases for which it is responsible under the law. It is the high court of the Republic."

(c) Migration Act (Decree-Law No. 22-86)

"Article 52. Denial of justice. There shall be deemed to be denial of justice when the court avoids making a formal pronouncement on the main issue or any interlocutory matter in the case which it is trying or of which it has cognizance.

The mere fact that the judge has made an order or pronounced judgment, in whatever sense, excludes any plea of denial of justice, even if it is argued that the ruling in question is contrary to the express law.

Article 53. Delay in the administration of justice ceases to be voluntary when the judge justifies it by reference to some point of law or some impediment which cannot be removed."

Article 5 (b) - The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution

102. The internal legislation relating to Article 5 (b) of the Convention is as follows:

(a) The Constitution

"Article 1. Protection of the individual. The State of Guatemala is constituted to protect the individual and the family; its supreme aim is the achievement of the common good.

Article 2. Duties of the State. It is the duty of the State to guarantee, for the inhabitants of the Republic, life, liberty, justice, security, peace and the full development of the individual.

Article 3. The right to life. The State guarantees and protects human life from the time of conception, as well as the integrity and security of the person.

...

Article 5. Freedom of action. Everyone has the right to do whatever the law does not prohibit; no one shall be obliged to carry out orders which are not based on and issued in accordance with the law. No one may be persecuted or molested for his opinions or for acts which do not involve a breach of the law.

...

Article 44. Rights inherent in the human person. The rights and guarantees granted by the Constitution do not exclude others which, although not expressly referred to therein, are inherent in the human person.

The interests of society shall take precedence over private interests.

Laws, governmental orders and orders of any other kind which diminish, restrict or distort rights guaranteed by the Constitution shall be null and void ipso jure.

Article 45. Action against offenders and legitimacy of resistance. The right to take proceedings against violators of human rights shall be a public right and may be exercised simply by lodging a complaint, without bond or formality of any kind. Resistance by the people to protect and defend the rights and guarantees set forth in the Constitution shall be legitimate.

....

Article 154. Public officials; subjection to the law. Public officials are the depositaries of authority, legally responsible for their official conduct, subject to, and never above, the law.

Public officials and employees are in the service of the State and not of any political party.

The function of a public official cannot be delegated except in the cases specified by the law and it may not be exercised without a prior oath of loyalty to the Constitution.

Article 155. Responsibility for violation of the law. When in the performance of his duties a State dignitary, official or worker violates the law to the detriment of an individual, the State and the State institution in which he serves shall be jointly and severally liable for the damage and injury caused.

Civil liability actions may be brought against public officials and employees so long as the time allowed under the Statute of Limitations, which shall be 20 years, has not run out.

In this case, criminal liability shall be extinguished at the end of twice the period specified by the law for the prescription of punishment.

Neither Guatemalans nor aliens may claim compensation from the State for damage or injury caused by armed movements or civil disturbances.

...

Article 263. Right to habeas corpus. Any person illegally detained, imprisoned or prevented in any other manner from enjoying his individual freedom, or threatened with the loss of that freedom or suffering vexatious treatment, even if he is imprisoned or detained in accordance with the law, has the right to apply for a writ of habeas corpus from the tribunals of justice, either to secure the restoration or safeguarding of his freedom or the cessation of the vexatious treatment or the termination of the coercion to which he has been subjected.

If the court orders the release of a person illegally imprisoned, the person shall be freed there and then.

When so requested or when the judge or tribunal deems it appropriate, the writ of habeas corpus shall be executed in the place where the prisoner is detained, without previous notice or notification.

Where a writ of habeas corpus is obtained in respect of any prisoner, the prisoner in question must be produced.

Article 264. Liabilities of offenders. Authorities ordering the concealment of the prisoner or refusing to produce him to the court or in any other manner disregarding this safeguard, as well as the officials who carry out their orders, shall be guilty of the crime of kidnapping and shall be punished in accordance with the law.

If the inquiries do not result in the person in respect of whom a writ of habeas corpus has been obtained being found, the tribunal shall of its own motion immediately order that the case be investigated until the facts have been fully determined.

Article 265. Applicability of amparo. The institution of amparo is established in order to protect persons from threats of violations of their rights or to restore their rights if they have been violated. There are no circumstances in which amparo is not applicable and it shall be granted whenever actions, orders, decisions or laws of the authorities imply a threat to or restriction or violation of rights guaranteed by the Constitution and the law.

Article 266. Unconstitutionality of laws in specific cases. In specific cases, in any proceedings before a court or jurisdiction of whatever instance and in review proceedings the parties may, at any time before judgment is given, raise an objection on the grounds of total or partial unconstitutionality of a law. The tribunal shall be required to make a ruling on the matter.

Article 267. Unconstitutionality of general laws. Proceedings against laws, regulations or provisions of a general character partially

or totally flawed by unconstitutionality shall be initiated directly in the Constitutional Court or Tribunal.

...

Article 274. Attorney for Human Rights. The Attorney for Human Rights is a commissioner of the Congress of the Republic for the defence of human rights guaranteed by the Constitution. He shall be empowered to supervise the administration; he shall serve a period of five years and shall make an annual report to the plenary Congress through the Commission of Human Rights.

(b) Constitutional amendments

"Article 33. Article 251 is amended to read as follows:
'Article 251. Government Procurator's Office. The Government Procurator's Office is an auxiliary institution of the civil service and the courts with autonomous functions whose main purpose is to ensure strict compliance with the laws of the country. Its organization and operation are regulated by its organization act.

The Government Procurator's Office shall be headed by the Procurator-General who is responsible for exercising the public right of action ...

The Procurator-General shall hold office for four years and shall have the same prerogatives and immunities as the judges of the Supreme Court of Justice. The President of the Republic may remove him on good grounds duly substantiated.'"

(c) Amparo, Habeas Corpus and Constitutionality Act (Decree 1-86 of the Constituent National Assembly)

"Article 1. Object of the Act. The object of this Act is to develop the guarantees and defences of the constitutional order and the rights of the individual protected by the Political Constitution of the Republic of Guatemala, the law and the international conventions ratified by Guatemala.

Article 2. Broad interpretation of the Act. The provisions of this Act shall always be interpreted broadly, so as to ensure that human rights are properly protected and the guarantees and defences of the constitutional order function effectively.

Article 3. Supremacy of the Constitution. The Constitution takes precedence over any law or treaty. Nonetheless, in matters of human rights, treaties and conventions accepted and ratified by Guatemala take precedence over internal law.

Article 4. Right of defence. Defence of one's person and one's rights is inviolable. No one may be sentenced or deprived of his rights without having been charged, heard and convicted in a lawful trial before a competent and previously established court or tribunal.

In any administrative or judicial proceedings the guarantees of due process must be maintained and respected.

...

Article 8. Object of amparo. The institution of amparo protects persons from threats of violations of their rights, or restores their rights if they have been violated. There are no circumstances in which amparo is not applicable and it shall be granted whenever actions, orders, decisions or laws of the authorities imply a threat to or restriction or violation of rights guaranteed by the Constitution and the law.

...

Article 82. Right to habeas corpus. Any person illegally detained, imprisoned or prevented in any other manner from enjoying his individual freedom, or threatened with the loss of that freedom or suffering vexatious treatment, even if he is imprisoned or detained in accordance with the law, has the right to apply for a writ of habeas corpus from the tribunals of justice, to secure the restoration or safeguarding of his freedom or the cessation of the vexatious treatment or the termination of the coercion to which he has been subjected."

(d) Migration Act (Decree-Law No. 22-86 of the Head of State)

"Article 41. Aliens are guaranteed the rights of liberty, equality and security of the person, the right to honour and reputation and the right to their property, in accordance with the provisions of the Constitution, subject to the exceptions laid down by law."

(e) Minors Code (Congressional Decree No. 78-79)

"Article 1. (Applicability.) Minors are under the protection of the State which shall exercise its responsibilities in accordance with the provisions of this Code whose rules shall apply both to the minors and to their parents and guardians and others in whose charge they are placed, as well as to the authorities and individuals involved in its administration.

Article 2. (Extent of the protection.) Every minor is entitled to State protection, irrespective of his social, economic or family circumstances.

Article 3. (Minority.) For the purposes of this Code, minors are those who have not yet reached the age of eighteen. In case of doubt and until such time as evidence to the contrary is produced, minority shall be assumed.

As an exception, minors in an abnormal situation who are under State protection receiving treatment and come of age shall remain in the establishment to which they have been admitted until they are deemed to be no longer in that situation and can be reintegrated into society.

Minors who have not yet reached the age of twelve may not be subjected to police or judicial proceedings for their acts or omissions.

...

Article 5. (Abnormal situation.) Minors are deemed to be in an abnormal situation if they are suffering or liable to suffer deviations or disturbances in their physiological, moral or mental condition or find themselves abandoned or at risk.

Article 6. (Non-imputability.) Minors cannot be charged with an offence; their antisocial acts are behavioural disturbances calling for specialized treatment and not punishment.

Article 7. (Responsibility.) Any abnormal situation involving a minor, whether it be abandonment, moral risk or behavioural disturbance, is the responsibility of his parents or guardians or of those in whose charge he is placed.

Third parties injured by the antisocial acts of minors have the right of action in order to make the aforementioned responsibility effective.

...

Article 13. (Establishments for minors.) The purpose of establishments and institutions for minors with abnormal behaviour shall be to provide them with a comprehensive education and medical, social and psychological care and to bring about their rehabilitation. They shall operate under the Department for Minors and the Family, shall have suitable staff and shall be governed by the regulations issued by the Executive Branch."

(f) Comprehensive Agreement on Human Rights (signed by the Government of the Republic and the National Revolutionary United Front in Mexico City on 29 March 1994)

"1. General undertaking on human rights

1.1. The Government of the Republic of Guatemala reaffirms its adherence to the principles and rules guaranteeing and protecting the full observance of human rights and its political intention to have them respected.

1.2. The Government of the Republic of Guatemala will continue to promote all measures designed to further and improve the provisions and mechanisms for the protection of human rights.

2. Strengthening of the institutions for the protection of human rights

2.1. The parties consider that any behaviour which limits, restricts or impairs the functions which, in the area of human rights, are assigned to the Judicial Branch, the Procurator for Human Rights and the

Procurator-General's Office undermines the fundamental principles of the State subject to the rule of law and that the said institutions must therefore be supported and strengthened in the exercise of those functions.

...

3. Undertaking against impunity

3.1. The parties agree that firm action must be taken against impunity. The Government will not favour the adoption of legislative measures or any other arrangement designed to prevent the trial and punishment of those responsible for violations of human rights.

3.2. The Government of the Republic of Guatemala will bring before the legislature the legal amendments to the Penal Code necessary to classify and punish, as especially serious crimes, forced or involuntary disappearances and summary or extra-judicial executions; similarly, the Government will call for the international community to recognize forced or involuntary disappearances and summary or extra-judicial executions as crimes against humanity.

3.3. No special law or exclusive jurisdiction may shield violations of human rights from being punished.

...

7. Guarantees and protection for individuals and bodies working for the protection of human rights

7.1. The parties agree that any act which might impair the guarantees pertaining to individuals or bodies working to promote and protect human rights is to be condemned.

7.2. In this connection, the Government of the Republic of Guatemala shall take special protective measures for the benefit of individuals and bodies working in the field of human rights. Likewise, it shall investigate promptly and exhaustively, the complaints they make against acts or threats which might harm them.

7.3. The Government of the Republic of Guatemala reiterates its undertaking to guarantee and effectively protect the work of individuals and bodies defending human rights.

...

Article 5 (c) - Political rights, in particular the rights to participate in elections - to vote and to stand for election - on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service

103. The internal legislation relating to Article 5 (c) of the Convention is as follows:

(a) The Constitution

"Article 4. Freedom and equality. In Guatemala all human beings are free and equal in dignity and in rights. Men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition which impairs his dignity. Human beings should behave fraternally towards each other.

Article 5. Freedom of action. Everyone has the right to do whatever the law does not prohibit; no one shall be obliged to carry out orders which are not based on and issued in accordance with the law. No one may be persecuted or molested for his opinions or for acts which do not involve a breach of the law.

...

Article 135. Civic duties and rights. The following are rights and duties of Guatemalans, in addition to those contained in other provisions of the Constitution and laws of the republic:

(a) To serve and defend the country;

(b) To comply with the Constitution of the Republic and to ensure that it is complied with;

(c) To work for the civic, cultural, moral, economic and social development of Guatemalans;

(d) To contribute to public expenditure in the manner prescribed by the law;

(e) To obey the laws;

(f) To maintain due respect for the authorities; and

(g) To do military and social service in accordance with the law.

Article 136. Political duties and rights. The rights and duties of citizens are:

(a) To enrol themselves in the Register of Citizens;

(b) To elect and be elected;

(c) To guard the freedom and effectiveness of the ballot and the purity of the electoral process;

(d) To seek public office;

(e) To participate in political activities; and

(f) To defend the principle of alternance and non-re-election in the exercise of the office of President of the Republic.

Article 137. Right to petition in political matters. Only Guatemalans have the right to petition in political matters.

All such petitions shall be dealt with and notified within a period of not more than eight days. If the authority fails to deal with the petition within that period, it shall be deemed to have been rejected and the petitioner may file an appeal in accordance with the law.

...

Article 173. Consultative procedures. All citizens must be consulted regarding political decisions of special importance.

The consultation shall be organized by the Supreme Electoral Tribunal on the initiative of the President of the Republic or of the Congress of the Republic which shall clearly specify the question or questions to be submitted to the citizens."

(b) Electoral and Political Parties Act (Decree No. 1-85 of the Constituent National Assembly)

"Article 1. Contents of the Act. This Act regulates matters relating to the exercise of political rights and the rights and obligations of the authorities, the electoral bodies and political organizations, as well as matters relating to the vote and the electoral process.

Article 2. Citizenship. All Guatemalans over the age of eighteen are citizens.

Article 3. Rights and duties of citizens. The following are inherent rights and duties of citizens:

(a) To respect and defend the Political Constitution of the republic;

(b) To enrol themselves on the Register of Citizens;

(c) To elect and be elected;

(d) To exercise the right to vote;

(e) To seek public office;

(f) To guard the freedom and effectiveness of the ballot and the purity of the electoral process;

(g) To defend the principle of alternance and non-re-election in the exercise of the office of President of the Republic;

(h) To perform electoral functions, for those so appointed.

...

Article 12. The vote. The vote is a civic right and duty inherent in citizenship. It is universal, secret, unique, personal and non-delegable.

Article 13. Freedom to vote. Citizens enjoy absolute freedom to cast their vote and no one may, directly or indirectly, compel them to vote or to vote for a particular candidate, ticket or political party or, in the case of the consultative procedures provided for in Article 173 of the Constitution, to express any particular opinion.

Article 5 (d) (i) - The right to freedom of movement and residence within the borders of the State

104. The internal legislation relating to Article 5 (d) (i) of the Convention is as follows.

(a) The Constitution

"Article 1. Protection of the individual. The State of Guatemala is constituted to protect the individual and the family; its supreme aim is the achievement of the common good.

Article 2. Duties of the State. It is the duty of the State to guarantee, for the inhabitants of the Republic, life, liberty, justice, security, peace and the full development of the individual.

...

Article 26. Freedom of movement. Everyone has the right to enter, stay in, pass through and leave the national territory and to change his domicile or residence, subject only to such restrictions as are imposed by law.

No Guatemalan may be expelled from or denied admission to the national territory or denied a passport or other identification documents.

Guatemalans may enter and leave Guatemala without being required to produce a visa.

The penalties which may be incurred by anyone who contravenes this provision shall be specified by law.

...

Article 44. Rights inherent in the human person. The rights and guarantees granted by the Constitution do not exclude others which, although not expressly referred to therein, are inherent in the human person.

The interests of society shall take precedence over private interests.

Laws, governmental orders and orders of any other kind which diminish, restrict or distort rights guaranteed by the Constitution shall be null and void ipso jure.

Article 45. Action against offenders and legitimacy of resistance. The right to take proceedings against violators of human rights shall be a public right and may be exercised simply by lodging a complaint, without bond or formality of any kind. Resistance by the people to protect and defend the rights and guarantees set forth in the Constitution shall be legitimate.

(b) Civil Code (Decree-Law No. 106)

"Article 32. Domicile is established voluntarily by residing in a place with the intention to stay there.

Article 33. The intention to stay shall be presumed in the case of continuous residence in the place for one year. There shall be no such presumption if it can be proved that residence is accidental or exists elsewhere.

Article 34. If someone lives alternately or has regular occupations in different places, he may be deemed to be domiciled in any of them, but if it is a question of acts which bear a special relation to a particular place, that place shall be his domicile.

...

Article 41. The legal residence is the municipal district in which a person resides and is governed by the same laws as domicile.

Legal residence confers equal rights and imposes the same local obligations on Guatemalans and aliens."

(c) Migration Act (Decree-Law No. 22-86 of the Head of State)

"Article 1. Purpose. The purpose of this Act is to regulate the relations between the State of Guatemala and aliens when, for any reason, they are present on the national territory, matters relating to the immigration and emigration of both Guatemalans and aliens, and the organization and administrative procedures necessary to ensure the effective treatment of questions of migration and alien control.

...

Article 32. Freedom of movement. Aliens may enter the national territory and pass through it, reside in it and leave it freely with no more restrictions than those established for Guatemalans and provided for in this Act.

...

Article 34. Proof. Anyone who bases his rights on foreign laws must prove the existence of those laws and, where appropriate, their validity.

Article 35. Application of the Act. The Act applies to all inhabitants of the Republic, including aliens, without prejudice to the provisions of international law accepted by Guatemala. Thus, from the

moment they arrive in the territory of the Republic, aliens are obliged to observe the laws and respect the authorities. Aliens have the right to the protection of the country's laws.

...

Article 39. Domicile. Aliens may, without losing their nationality, take up domicile in the Republic for any legal purpose. The acquisition, change or loss of domicile is governed by the laws of Guatemala.

...

Article 41. Rights of aliens. Aliens are guaranteed the rights of liberty, equality and security of the person, the right to honour and reputation and the right to their property, in accordance with the provisions of the Constitution, subject to the exceptions established by law.

...

Article 44. Right of residence. Officials who enter the Republic as representatives of their governments or international organizations may acquire the right of residence at the end of their duties if they have remained in Guatemala for the length of time required by the Act for the purpose of obtaining permanent residence.

Article 45. Persons of Central American origin who enter the country legally may obtain permanent residence without any requirements other than that they prove their good character and are not affected by the prohibitions established in this Act or its regulations, provided that they have remained in the Republic for a period of not less than two years.

...

Article 47. Residence by marriage. Aliens married to Guatemalans may become permanent residents by virtue of the mere fact of being married, a situation which will continue to exist after the dissolution of the marriage bond, provided that one or more children have been born and the marriage has lasted for a period of at least two years.

...

Article 49. Re-acquisition of nationality. Anyone entering the country in order to re-acquire Guatemalan nationality shall be considered to be a permanent resident while they obtain it, without any requirement other than having to prove their previous status as Guatemalans. In this case, the usual registration fees shall not be payable.

Article 50. Paid activity. Any alien permanent resident may freely engage in paid or profit-making activities, without any restrictions other than those established by law.

...

Article 60. Loss of residence. Aliens who have acquired residence in Guatemala and are absent from the national territory for two years or more shall lose their status of resident by the mere fact of their absence.

This provision does not apply to alien residents who are rendering services to the State of Guatemala."

Article 5 (d) (ii) - The right to leave any country, including one's own, and to return to one's country

105. The internal legislation relating to Article 5 (d) (ii) of the Convention is as follows.

(a) The Constitution

"Article 26. Freedom of movement. Everyone has the right to enter, stay in, pass through and leave the national territory and to change his domicile or residence, subject only to such restrictions as are imposed by law.

No Guatemalan may be expelled from or denied admission to the national territory or denied a passport or other identification documents.

Guatemalans may enter and leave Guatemala without being required to produce a visa.

The penalties which may be incurred by anyone who contravenes this provision shall be specified by law.

...

Article 44. Rights inherent in the human person. The rights and guarantees granted by the Constitution do not exclude others which, although not expressly referred to therein, are inherent in the human person.

The interests of society shall take precedence over private interests.

Laws, governmental orders and orders of any other kind which diminish, restrict or distort rights guaranteed by the Constitution shall be null and void ipso jure.

Article 45. Action against offenders and legitimacy of resistance. The right to take proceedings against violators of human rights shall be a public right and may be exercised simply by lodging a complaint, without bond or formality of any kind. Resistance by the people to protect and defend the rights and guarantees set forth in the Constitution shall be legitimate.

Article 46. Primacy of international law. It is established as a general principle that, in matters of human rights, treaties and conventions accepted and ratified by Guatemala take precedence over internal law."

(b) Act on the Judicial Branch (Congressional Decree No. 2-89)

"Article 1. General rules. The basic provisions of this Act are the general rules of application, interpretation and integration of the Guatemalan legal order.

...

Article 4. Acts null and void. Acts contrary to mandatory rules and express prohibitions are null and void ipso jure, unless those rules and prohibitions make some other provision for the case of contravention.

Article 5. Scope of the Act. The Act shall apply to anyone, whether a Guatemalan national or an alien, resident or in transit, without prejudice to the provisions of international law accepted by Guatemala, and to the entire territory of the Republic, which includes the soil, the subsoil, the terrestrial maritime zone, the continental shelf, the economic influence zone and the airspace, as defined by legislation and international law.

...

Article 7. Non-retroactivity. The Act shall not have retroactive effect nor shall it affect acquired rights. An exception shall be made in criminal matters in so far as this works to the advantage of the accused.

Procedural laws shall have immediate effect, except as otherwise specified by the law itself.

...

Article 13. Primacy of special provisions. The special provisions of laws take precedence over the general provisions.

...

Article 19. Waiver of rights. Rights granted by law may be waived provided that such waiver is not contrary to the interests of society or public order, detrimental to a third party or prohibited by other laws.

...

Article 22. Primacy of the interests of society. The interests of society shall take precedence over private interests.

...

Article 26. Acquired rights. The status and capacity of an individual of foreign nationality acquired in accordance with his personal law shall be recognized in Guatemala if not contrary to public order.

...

Article 35. Foreign law. The Guatemalan courts shall apply of their own motion, when appropriate, the laws of other States. The party invoking the application of foreign law or disagreeing that it should be invoked or applied shall substantiate its wording, validity and meaning by submitting a duly authenticated certificate signed by two lawyers practising in the country whose legislation is concerned. This notwithstanding, the national court may ascertain such facts, of its own motion or on application, through diplomatic channels or by other means recognized by international law."

(c) Migration Act (Decree-Law No. 22-86)

"Article 1. Purpose. The purpose of this Act is to regulate the relations between the State of Guatemala and aliens when, for any reason, they are present on the national territory, matters relating to the immigration and emigration of both Guatemalans and aliens, and the organization and administrative procedures necessary to ensure the effective treatment of questions of migration and alien control.

...

Article 31. Subjection. Aliens are subject to the laws of the Republic, without prejudice to the provisions of international law accepted by Guatemala.

Article 32. Freedom of movement. Aliens may enter the national territory and pass through it, reside in it and leave it freely with no more restrictions than those established for Guatemalans and provided for in this Act.

...

Article 34. Proof. Anyone who bases his rights on foreign laws must prove the existence of those laws and, where appropriate, their validity.

Article 35. Application of the law. The law applies to all inhabitants of the Republic, including aliens, without prejudice to the provisions of international law accepted by Guatemala. Thus, from the moment they arrive in the territory of the Republic, aliens are obliged to observe the laws and respect the authorities. Aliens have the right to the protection of the country's laws.

...

Article 91. Obligation to obtain a passport. To leave the country, Guatemalans must obtain a passport from the General Directorate of Migration and, if necessary, a visa for the country to which they are travelling. The said Directorate is the only one in the Republic authorized to issue passports, subject to the exceptions established in this Act.

...

Article 114. Visa requirement. To enter the national territory with a valid passport, aliens need to have the appropriate visa, without prejudice to the provisions of international conventions on the abolition of visas.

The Ministry of Foreign Affairs may conclude visa abolition agreements by means of a simple exchange of notes with States that grant the same treatment to Guatemalans, when the stay of the foreign visitor does not exceed three months."

Article 5 (d) (iii) - The right to nationality

106. The internal legislation relating to Article 5 (d) (iii) of the Convention is as follows.

(a) The Constitution

"Article 144. Nationality by origin. Persons born in the territory of the Republic of Guatemala, on Guatemalan ships and aircraft, and children born abroad of a Guatemalan father or mother are Guatemalans by origin. This does not include the children of diplomatic officials and persons exercising legally equivalent functions.

No Guatemalan by origin may be deprived of Guatemalan nationality.

Article 145. Nationality of Central Americans. Nationals by birth of the republics which formed the Federation of Central America are also considered Guatemalans by origin if they acquire domicile in Guatemala and declare their desire to be Guatemalans before the competent authority. In such a case, they may retain their nationality by origin, without prejudice to what may be prescribed in Central American treaties or agreements.

Article 146. Naturalization. Persons who obtain their naturalization in accordance with the law are Guatemalans.

Naturalized Guatemalans have the same rights as Guatemalans by origin, except for the limitations laid down by this Constitution.

Article 147. Citizenship. Guatemalans over the age of 18 years are citizens. Citizens shall suffer no limitations beyond those laid down by this Constitution and the law.

Article 148. Suspension, loss and recovery of citizenship. Citizenship is suspended, lost and recovered in accordance with the rules laid down by the law."

(b) Migration Act (Decree-Law No. 22-86)

"Article 31. Subjection. Aliens are subject to the laws of the Republic, without prejudice to the provisions of international law accepted by Guatemala.

...

Article 39. Domicile. Aliens may, without losing their nationality, take up domicile in the Republic for any legal purpose. The acquisition, change or loss of domicile is governed by the laws of Guatemala.

...

Article 49. Re-acquisition of nationality. Anyone entering the country in order to re-acquire Guatemalan nationality shall be considered to be a permanent resident while they obtain it, without any requirement other than having to prove their previous status as Guatemalans. In this case, the usual registration fees shall not be payable."

Article 5 (d) (v) - The right to own property alone as well as in association with others

107. The internal legislation relating to Article 5 (d) (v) of the Convention is as follows.

(a) The Constitution

"Article 4. Freedom and equality. In Guatemala all human beings are free and equal in dignity and in rights. Men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition which impairs his dignity. Human beings should behave fraternally towards each other.

...

Article 39. Private property. The ownership of private property is guaranteed as an inherent right of the human person. Everyone may freely dispose of his property in accordance with the law.

The State guarantees the exercise of this right and shall create conditions which will facilitate the use and enjoyment of property by its owner, so that advancement of the individual and national development may be achieved, for the benefit of all Guatemalans.

Article 40. Expropriation. In special cases private property may be expropriated for reasons of duly proved collective utility, social benefit or public interest. The expropriation must be carried out in accordance with the procedure prescribed by law and the property affected shall be appraised by experts on the basis of its current value.

Compensation must be paid in advance in currency of legal tender, unless some other form of compensation is agreed with the party concerned.

Only in the event of war, public disaster or serious disturbance of the peace may property be occupied or taken over or expropriated without prior compensation, but compensation must be paid immediately after the emergency has ended. The rules to be followed with respect to enemy property shall be established by law.

The manner of payment of compensation for the expropriation of idle land shall be specified by law. In no case may the period in which such payment is actually made exceed 10 years.

Article 41. Protection of property rights. Property rights may not be restricted in any way by reason of political activity or a political offence. Confiscation of property and the imposition of confiscatory fines are prohibited. In no case may fines exceed the value of unpaid tax.

Article 42. Copyright and patent rights. The rights of authors and inventors are recognized. Those holding such rights enjoy exclusive ownership of their work or their invention in accordance with the law and international treaties.

...

Article 44. Rights inherent in the human person. The rights and guarantees granted by the Constitution do not exclude others which, although not expressly referred to therein, are inherent in the human person.

The interests of society shall take precedence over private interests.

Laws, governmental orders and orders of any other kind which diminish, restrict or distort rights guaranteed by the Constitution shall be null and void ipso jure.

Article 45. Action against offenders and legitimacy of resistance. The right to take proceedings against violators of human rights shall be a public right and may be exercised simply by lodging a complaint, without bond or formality of any kind. Resistance by the people to protect and defend the rights and guarantees set forth in the Constitution shall be legitimate.

Article 46. Primacy of international law. It is established as a general principle that, in matters of human rights, treaties and conventions accepted and ratified by Guatemala shall take precedence over internal law.

...

Article 66. Protection of ethnic groups. Guatemala is made up of different ethnic groups, including indigenous groups of Mayan ancestry. The State recognises, respects and promotes their ways of life, customs, traditions and forms of society, languages and dialects, and the wearing of indigenous costumes by men and women."

Article 67. Protection of indigenous land and of indigenous agricultural cooperatives. Land belonging to indigenous cooperatives, communities or any other form of communal or collective agrarian landholding, as well as family property and low-cost housing, shall enjoy the special protection of the State and preferential credit and technical

assistance which will guarantee their legal possession and development, in order to ensure a better quality of life for all the inhabitants."

Indigenous and other communities holding land which has historically belonged to them and which they have traditionally administered in a special manner shall maintain this system.

Article 68. Land for indigenous communities. The State shall, under special programmes and appropriate legislation, make State land available to indigenous communities which need it for their development.

...

Article 155. Responsibility for violation of the law. When in the performance of his duties a State dignitary, official or worker violates the law to the detriment of an individual, the State and the State institution in which he serves shall be jointly and severally liable for the damage and injury caused.

Civil liability actions may be brought against public officials and employees so long as the time allowed under the Statute of Limitations, which shall be 20 years, has not run out.

In this case, criminal liability shall be extinguished at the end of twice the period specified by the law for the prescription of punishment.

Neither Guatemalans nor aliens may claim compensation from the State for damage or injury caused by armed movements or civil disturbances."

(b) Civil Code (Decree-Law No. 106)

"Article 464. Content of right of ownership. Ownership is the right to enjoy and dispose of property within the limits of and with respect for the obligations established by law.

Article 465. Abuse of right. In exercising his right, the owner may not engage in acts which injure others and, especially in his industrial activities, must refrain from any excesses injurious to the ownership of his neighbour.

Article 466. Right of the injured party. Anyone who suffers or is threatened with injury because another goes too far in the exercise of his right of ownership or abuses that right may require that the status quo be restored or that ad hoc measures be adopted, without prejudice to any compensation for the injury suffered.

...

Article 468. Defence of ownership. The owner has the right to defend his ownership by legal means and not to be disturbed in his enjoyment of it, if he has not previously been summonsed, heard and found against.

Article 469. Recovery. The owner of a thing has the right to recover it from any mere or legal possessor.

Article 470. Copyright. The product or value of a person's lawful work or industry and the creations of his inventiveness or talent are his own and are governed by the laws relating to ownership in general and by the special laws on these matters.

Article 471. Fruits of property. The owner of property has the right to its fruits and to whatever may be added by accession, in accordance with the provisions of the corresponding chapter of this Code.

Article 472. Property of historical and artistic importance. Private property, movable or immovable, declared to be an object of artistic, historical or archaeological importance, is subject to special laws.

...

Article 485. Co-ownership. There is co-ownership when a good or right belongs to several persons in undivided ownership.

In the absence of a contract or special provision, co-ownership shall be governed by the provisions of this chapter.

Article 486. Interests of the participants. The co-participants are presumed to have equal interests. The shares of the co-owners in both the profits and the expenses of co-ownership shall be proportional to their respective interests.

Article 487. Use of the thing co-owned. Each participant may make use of the thing co-owned, provided that he uses it appropriately and not in a manner prejudicial to the interests of the community and does not prevent the co-owners from using it in accordance with their rights.

...

Article 491. Right of each co-owner. Each co-owner has full ownership of his share and of its fruits and benefits and may therefore dispose of, transfer or encumber it or even transfer only the use of it, unless it be a question of a personal right. However, the effect of the disposal or encumbrance in relation to the co-owners shall be restricted to the portion allocated to it in the division of property at the end of the period of co-ownership. The co-owners have the right of first refusal, which they may exercise within fifteen days of having been notified of the contract to be signed.

Article 492. Right to request division. No co-owner shall be obliged to remain within the co-ownership. Any co-owner may, at any time, request that the thing co-owned be divided, except where common ownership is established by law.

Once division has been agreed, each co-owner shall have the prior right to purchase the shares of the others if they wish to sell.

...

Article 498. Right of first refusal. If all or part of the thing co-owned has to be exploited, each of the co-owners shall have the prior right to obtain it on the same terms as the best offer.

If two or more co-owners want the lease and are unable to reach agreement, it shall be awarded to all of them in proportion to their respective interest in the co-ownership."

(c) Act on the Judicial Branch (Congressional Decree No. 2-89)

"Article 27. Situation of the property (Lex rei sitae). Property is governed by the law of the place where it is situated.

Article 28. External formalities of acts (Locus regit actum). The extrinsic formalities of legal acts and transactions are regulated in accordance with the law of the place in which they are performed."

(d) Migration Act (Decree-Law No. 22-86)

"Article 27. Territoriality. Property, of whatever description, situated in Guatemala is subject to Guatemalan law, even though the owners may be foreign.

Article 28. Special ownership. Only Guatemalans by origin or corporate bodies whose members are Guatemalan by origin may own or possess rural immovable property within a 15-kilometre wide strip running along the frontiers, measured from the dividing line. Foreigners who currently own immovable property situated in the aforesaid strip shall continue to enjoy their respective rights, but may not transfer them by any deed, except to Guatemalans by origin.

Article 29. Prohibition on obtaining title. No alien may obtain supplementary title to unregistered immovable property he possesses nor have it registered, until possession has been converted into ownership. The rights of hereditary succession form an exception to this rule.

Article 30. Full ownership. The right of private ownership is guaranteed to aliens who may dispose of their property in accordance with the law and without restrictions other than those established by law."

Article 5 (d) (vi) - The right to inherit

108. The internal legislation relating to Article 5 (d) (vi) of the Convention is as follows.

(a) The Constitution

"Article 5. Freedom of action. Everyone has the right to do whatever the law does not prohibit; no one shall be obliged to carry out orders which are not based on and issued in accordance with the law. No one may be persecuted or molested for his opinions or for acts which do not involve a breach of the law."

(b) Civil Code (Decree-Law No. 106)

"Article 917. Hereditary succession. Succession by reason of death is determined by the wishes of the person concerned, expressed in a will, or, failing that, by law. The former is called testamentary and the latter intestate succession and both include all the property, rights and obligations not extinguished by death.

Article 918. Transmission of inheritance. The rights to a person's succession are transmitted from the moment of his death and the succession may be universal or particular.

Article 919. Inheritance and legacy. Universal succession is called inheritance and particular succession is called a legacy. Universal succession means succeeding the deceased in respect of all his property and transmissible obligations, except for legacies. Particular succession means succeeding to one or more specific pieces of property.

Succession may be partly testamentary and partly intestate.

Article 920. Limited responsibility of heir. The heir is responsible for the debts and obligations of the estate only to the extent of its assets.

The legatee is responsible only for the obligations expressly imposed on him by the testator.

Article 921. Legatees considered to be heirs. When the entire estate is distributed in legacies, the legatees shall be considered to be heirs.

Article 922. Rights of the heir. Each heir may dispose of the right which he has in the estate but he may not dispose of the things which constitute the succession.

Article 923. Law governing the capacity to succeed. Where property situated outside the Republic is concerned, the capacity to succeed is governed by the law of the heir's or legatee's domicile at the time of the death of the deceased.

...

Article 934. Freedom to dispose of property by will. Anyone with civil capacity may dispose of his property by making a will in favour of anyone competent to inherit and not legally prohibited from doing so.

The testator may entrust to a third person the distribution of bequests or legacies intended for specific persons or objects.

Article 935. Definition of will. A will is a purely personal and revocable deed by means of which a person arranges for the disposal of all or some of his property after his death.

Article 936. Limits on freedom to dispose of property by will. The only limit on the freedom to dispose of property by will is the right of certain persons to maintenance.

Article 937. Reciprocal succession contracts prohibited. Reciprocal succession contracts, between spouses or any other persons, are prohibited and a will made under such a contract is null and void.

Article 938. Two or more persons may not make a will by the same act.

...

Article 940. Interpretation of testamentary dispositions. Any testamentary disposition shall be understood literally, unless it be clearly apparent that the testator intended it to be read differently. The will must be interpreted by taking not merely isolated words or phrases but the whole of the declaration of intent.

Article 941. A child born posthumously or after the will has been made, if it has not been expressly disinherited and the testator has distributed his property unequally among his children, shall have the right to a share of the inheritance equivalent to the portion it would have received if the entire estate had been divided into equal parts.

If the testamentary heirs are not children of the testator, a child born posthumously or after the will has been made who has been expressly disinherited shall have the right to fifty per cent of the inheritance. In either case, the portion inherited by the child born posthumously or after the will was made shall be deducted pro rata from the portions of the testamentary heirs. A child who has been passed over shall be deemed to have been disinherited.

Article 942. Disposition in favour of relatives in general. A disposition worded in favour of relatives of the testator, in general or indefinite form, shall be understood to have been made solely in favour of the heirs entitled to succeed.

Article 943. Donation mortis causa. Donations mortis causa are governed by the same provisions as the testamentary dispositions concerning legacies.

...

Article 945. Incompetence. The following are incompetent to make dispositions by will: (1) those deprived of their civil rights; (2) deaf-mutes and those who have lost the power of speech when unable to make themselves understood in writing; and (3) those who, without having been deprived of their civil rights, are not in possession of their intellectual and volitional faculties, for any reason, at the time of making a will.

Article 946. No one appointed by mistake may be an heir or legatee.

Article 947. A will which omits to appoint an heir is not annulled thereby.

The goods, rights and securities not disposed of by the testator who omits to appoint an heir pass to his legal heirs.

Article 948. The testator who designates two or more persons as his heirs shall indicate the portion of the estate which he intends to go to each of them. If he fails to do so, all the heirs shall have equal rights to the property inherited.

Article 949. If, taken together, the portions assigned by the testator to his heirs exceed the total amount of the estate, they shall be reduced pro rata.

Article 950. If the testator indicates all the portions which he is leaving to his heirs and there still remains something not specifically allocated, this part shall fall to the legal heirs.

Article 951. If the will assigns a specific share of the inheritance to one or more heirs without indicating the share of the co-heirs, the latter shall divide up equally what remains of the inheritance after the specially assigned portion has been deducted.

Article 952. Except as otherwise provided by the testator, property left by will, whether as an inheritance or a legacy, which is in abeyance because the designated heirs have died before the testator, shall pass by right of representation to those specified by law, if relatives of the testator.

Article 953. If the estate is in abeyance because of the non-acceptance of the inheritance and there is no right of representation, the property shall pass to the testamentary sole heir; failing that, it shall pass to those entitled to the intestate inheritance, in accordance with the law, provided that they have not been expressly disinherited by the testator.

Article 954. The form of wills. With respect to their form, wills may be ordinary or special.

Ordinary wills are open or closed.

Special wills are those made in the cases and conditions stipulated in this chapter (wills of the blind and deaf, military and maritime wills, secret wills, wills made by convicts or abroad).

...

Article 1002. The testator may dispose of a thing or of a sum or of all or part of his property in the form of a legacy in favour of one or more natural or legal persons.

Article 1003. A legatee is a person who is left something by will, in accordance with the preceding article, but without being appointed heir.

Article 1004. If the entire inheritance is distributed in the form of legacies, the debts, charges and maintenance shall be divided pro rata among the legatees, in proportion to the value of their respective legacies.

...

Article 1068. Intestate succession. Circumstances. Succession is intestate: (1) when there is no will; (2) when the condition imposed on the appointment of an heir is not met, or the appointee dies before the testator, or is not competent to inherit, or repudiates the inheritance, in addition to the cases of substitution, representation and accretion in accordance with this Code; (3) when there is no appointed heir in the will and the testator does not dispose of all his property through legacies; and (4) when the testator has omitted to dispose of a piece or pieces of property.

Article 1069. In cases (3) and (4) of the preceding article only the property not disposed of by the testator is considered intestate.

Article 1070. For the purposes of regulating intestate succession, the law considers only the bonds of kinship, not the gender of the persons concerned nor the nature or origin of the goods.

Article 1071. In intestate succession, inheritance is by inherent right or by right of representation.

Article 1072. Those who succeed by inherent right inherit per capita, that is, each receives in equal shares the portion assigned to him by law.

Article 1073. Those who succeed by right of representation inherit per stirpes, as stated in Article 932. (Provided that the inheritance is by representation in the direct descending line, the inheritance shall be so divided per stirpes that the representative or representatives do not inherit more than would be inherited by the person represented if he were alive.)

Article 1074. Under intestate succession, in accordance with the rules laid down below, the inheritance shall pass to the relatives of the deceased or, failing that, to the State and the Universities of Guatemala, in equal shares.

The nearer relative in degree shall exclude the more distant, subject to the right of representation where applicable.

...

Article 1076. All children inherit in equal shares. Children, whether or not born in wedlock, inherit from their parents in equal

shares. The adopted child inherits from his adoptive parent in the same degree as the natural children, but there is no right of succession between the adopted child and the relatives of the adopter.

...

Article 1078. Order of intestate succession. Under the law of intestate succession the inheritance passes, in the first instance, to the children, including adopted children, and to the surviving spouse with no right to acquisitions, who shall receive equal shares.

Nevertheless, the surviving spouse whose right to acquisitions is less than the hereditary portion to which he or she would be entitled in the absence of acquisitions shall have the right to have his or her share made up to an amount equivalent to that portion, the difference being deducted from the estate.

(c) Act on the Judicial Branch (Congressional Decree No. 2-89)

"Article 1. General rules. The basic provisions of this Act are the general rules of application, interpretation and integration of the Guatemalan legal order.

...

Article 4. Acts null and void. Acts contrary to mandatory rules and express prohibitions are null and void ipso jure, unless those rules and prohibitions make some other provision for the case of contravention.

Acts done under cover of the wording of a rule with a view to achieving a result prohibited by or contrary to the law shall be deemed to have been done fraudulently and shall not prevent the due application of the rule which they were intended to circumvent.

Article 5. Sphere of application. The rule of law shall extend to anyone, whether a Guatemalan national or an alien, resident or in transit, without prejudice to the provisions of international law accepted by Guatemala, and to the entire territory of the Republic, which includes the soil, the subsoil, the terrestrial maritime zone, the continental shelf, the economic influence zone and the airspace, as defined by legislation and international law."

Article 5 (d) (vii) - The right to freedom of thought, conscience and religion

109. The internal legislation relating to Article 5 (d) (vii) of the Convention is as follows.

(a) The Constitution

"Article 1. Protection of the individual. The State of Guatemala is constituted to protect the individual and the family; its supreme aim is the achievement of the common good.

Article 2. Duties of the State. It is the duty of the State to guarantee, for the inhabitants of the Republic, life, liberty, justice, security, peace and the full development of the individual.

...

Article 4. Freedom and equality. In Guatemala all human beings are free and equal in dignity and in rights. Men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition which impairs his dignity. Human beings should behave fraternally towards each other.

...

Article 33. Right of assembly and demonstration. The right of peaceful unarmed assembly is recognized.

The rights of assembly and public demonstration may not be restricted, limited or curtailed and the law shall regulate these rights only for the purpose of guaranteeing public order.

Religious demonstrations outside churches are permitted and are governed by law.

For the exercise of these rights, it shall be sufficient for the organizers to give prior notice to the competent authority.

...

Article 35. Freedom to express opinions. Opinions may be freely expressed and disseminated by any means, without censorship or prior authorization. This constitutional right may not be restricted by law or by any governmental decision. Anyone who, in exercising this right, fails to respect the privacy of others or morality shall be liable under the law. Anyone who considers himself offended shall have the right to publication of his statements in defence, clarification or correction.

Publications containing complaints, criticisms or allegations against public officials or employees for acts committed in the performance of their duties shall not constitute crimes or misdemeanours.

Public officials and employees may require that a tribunal of honour, composed in the manner specified by law, declare that a publication affecting them is based on inaccuracies or that the charges made against them are unfounded. A decision which vindicates the person offended shall be published in the information media in which the allegation appeared.

Activities of the information media are in the public interest and such media may in no case be expropriated. Enterprises, workshops, equipment, machinery and other goods and chattels of information media may not be the subject of closure, embargo, take-over, confiscation or seizure, nor may their operation be interrupted, on grounds of commission of crimes or misdemeanours in the expression of opinion.

Access to sources of information shall be free and no authority may limit this right.

The approval, limitation or cancellation of concessions granted to persons by the State may not be used as a means of pressure or coercion to limit the exercise of the free expression of opinion.

Crimes and misdemeanours as referred to in this article shall be considered by a panel of judges meeting in private.

The owners of information media shall provide socio-economic coverage for their reporters by taking out life insurance policies.

Article 36. Freedom of religion. The practice of all religions is free. Everyone has the right to practice his religion or belief in public and in private, through instruction, worship and observance, without limitation other than public order and due respect for the dignity of the hierarchy and for members of other faiths.

Article 37. Juridical personality of churches. The juridical personality of the Catholic Church is recognized. Other churches and faiths, as well as religious bodies and associations, shall obtain recognition of their juridical personality in accordance with the rules of their own organization and the Government may not deny such recognition, except for reasons of public order.

The State shall issue to the Catholic Church, at no cost, deeds of ownership of such real property as it now peacefully possesses for its own purposes, provided the said property formed part of the endowment of the Catholic Church in the past. Property registered in the name of third persons and property which the State has traditionally used for its services may not be affected.

Real property of religious bodies that is used for worship, instruction or social welfare activities shall enjoy exemption from taxes, rates and contributions."

Article 5 (d) (viii) - The right to freedom of opinion and expression

110. The internal legislation relating to Article 5 (d) (viii) of the Convention is as follows.

(a) The Constitution

"Article 1. Protection of the individual. The State of Guatemala is constituted to protect the individual and the family; its supreme aim is the achievement of the common good.

Article 2. Duties of the State. It is the duty of the State to guarantee, for the inhabitants of the Republic, life, liberty, justice, security, peace and the full development of the individual.

Article 3. The right to life. The State guarantees and protects human life from the time of conception, as well as the integrity and security of the person.

Article 4. Freedom and equality. In Guatemala all human beings are free and equal in dignity and in rights. Men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition which impairs his dignity. Human beings should behave fraternally towards each other.

Article 5. Freedom of action. Everyone has the right to do whatever the law does not prohibit; no one shall be obliged to carry out orders which are not based on and issued in accordance with the law. No one may be persecuted or molested for his opinions or for acts which do not involve a breach of the law.

...

Article 28. Right of petition. The inhabitants of the Republic of Guatemala have the right to address petitions, individually or collectively, to the public authorities and the latter are required to consider them and take a decision upon them according to law.

In the case of administrative matters, petitions must be dealt with and the decisions thereon communicated within a period not exceeding 30 days.

In the case of fiscal matters, taxpayers challenging administrative decisions in cases involving objection to or adjustment of any tax shall not be required to make prior payment of the tax or any security.

...

Article 44. Rights inherent in the human person. The rights and guarantees granted by the Constitution do not exclude others which, although not expressly referred to therein, are inherent in the human person.

The interests of society shall take precedence over private interests.

Laws, governmental orders and orders of any other kind which diminish, restrict or distort rights guaranteed by the Constitution shall be null and void ipso jure.

Article 45. Action against offenders and legitimacy of resistance. The right to take proceedings against violators of human rights shall be a public right and may be exercised simply by lodging a complaint, without bond or formality of any kind. Resistance by the people to protect and defend the rights and guarantees set forth in the Constitution shall be legitimate.

Article 46. Primacy of international law. It is established as a general principle that, in matters of human rights, treaties and

conventions accepted and ratified by Guatemala shall take precedence over internal law."

(b) Constitutional Law on the Expression of Opinion (Decree No. 9)

"Article 1. Opinions may be freely expressed in any form and in no case may a bond or security be required in order to exercise this right nor may it be subjected to prior censorship.

Article 2. "Printed matter" is defined as the fixation of ideas by means of printing, lithography, photography, mimeography, polygraphy, phonographic recording or any other mechanical procedure currently employed or which may be employed in the future for the reproduction of ideas.

For the purposes of this law, any other form of representation of ideas intended for the public, such as prints, photographs, engravings, emblems, diplomas, medals, or phonographic disks, tapes or wires, whether fixed on paper, fabric or some other kind of material, is considered equivalent to printed matter.

...

Article 15. For the purposes of this law, radio broadcasting is deemed to be the expression of opinion by radio.

Article 16. Radio broadcasts are classified as radio magazines, newscasts, programmes, commentaries, talks and lectures.

A radio magazine is a series of broadcasts always with the same title, transmitted one or more times a day or at regular intervals for the purpose of disseminating news, ideas and opinions. This definition includes supplementary or special magazine broadcasts.

A newscast is a regular radio broadcast exclusively devoted to reporting events taking place at home or abroad.

A programme is an entertainment, cultural or advertising broadcast, of any length.

A commentary is any gloss or opinion expressed on events taking place at home or abroad.

...

Article 27. No one may be persecuted or molested for his opinions. However, anyone who fails to respect the privacy of others or morality or commits crimes or misdemeanours punished by this law shall be liable under the law.

Article 28. Publications in which the freedom to express opinions is abused may give rise to proceedings before a panel of judges and penalties, in accordance with this law, in the following cases:

(a) Publications involving treason;

(b) Publications which offend morality;

(c) Publications which this law deems to be seditious;

(d) Publications which fail to respect the privacy of others;

(e) Publications which contain libels or grievous insults.

...

Article 37. Newspapers are obliged to publish clarifications, corrections, explanations or refutations submitted to them by any natural or legal person who is the subject of inaccurate statements or allegations or is directly and personally mentioned in some other way.

...

Article 48. Crimes and misdemeanours involving the expression of opinions by the information media shall be judged solely by a panel of judges which shall rule, in each case, to the best of its ability, whether the act does or does not constitute a crime or misdemeanour.

If a panel of judges makes an affirmative ruling, the judge of first instance who has convened it shall continue the proceedings to establish the penalties in accordance with the law; if the ruling is negative, the case shall be dismissed without further formalities.

(c) Act on the Judicial Branch (Congressional Decree No. 2-89)

"Article 1. General rules. The basic provisions of this Act are the general rules of application, interpretation and integration of the Guatemalan legal order.

Article 2. Sources of the law. The legislation is the source of the legal order. It shall be supplemented by the jurisprudence established in accordance with the law.

Custom shall prevail only in the absence of any applicable law, provided that it is not contrary to morality or public order and is authenticated.

...

Article 4. Acts null and void. Acts contrary to mandatory rules and express prohibitions are null and void ipso jure, unless those rules and prohibitions make some other provision for the case of contravention.

Acts done under cover of the wording of a rule with a view to achieving a result prohibited by or contrary to the law shall be deemed to have been done fraudulently and shall not prevent the due application of the rule which they were intended to circumvent.

Article 5. Sphere of application. The rule of law shall extend to anyone, whether a Guatemalan national or an alien, resident or in transit, without prejudice to the provisions of international law accepted by Guatemala, and to the entire territory of the Republic, which includes the soil, the subsoil, the terrestrial maritime zone, the continental shelf, the economic influence zone and the airspace, as defined by legislation and international law.

...

Article 9. Supremacy of the Constitution. The courts of justice shall always observe the principle of the hierarchy of norms and that of supremacy of the Constitution over any other law or international treaty, except for treaties or conventions on human rights ratified by Guatemala, which take precedence over internal law.

Provisions which contradict a norm of higher rank are invalid.

...

Article 13. Primacy of special provisions. The special provisions of laws take precedence over the general provisions."

Article 5 (d) (ix) - The right to freedom of peaceful assembly and association

111. The internal legislation relating to Article 5 (d) (ix) of the Convention is as follows.

(a) The Constitution

"Article 33. Right of assembly and demonstration. The right of peaceful unarmed assembly is recognized.

The rights of assembly and public demonstration may not be restricted, limited or curtailed and the law shall regulate these rights only for the purpose of guaranteeing public order.

Religious demonstrations outside churches are permitted and are governed by law.

For the exercise of these rights, it shall be sufficient for the organizers to give prior notice to the competent authority.

Article 34. Right of association. The right of free association is recognized. No one shall be required to join or be a member of a group or association established for self-defence or a similar purpose. The case of professional associations shall constitute an exception to this rule."

(b) Electoral and Political Parties Act (Decree-Law No. 1-85 of the Constituent National Assembly)

"Article 1. Contents of the Act. This Act regulates matters relating to the exercise of political rights and the rights and obligations of the

authorities, the electoral bodies and political organizations, as well as matters relating to the vote and the electoral process.

...

Article 16. Political organizations. The following are political organizations:

(a) Political parties and the civic committees for establishing them;

(b) Civic electoral committees;

(c) Associations with political objectives.

Article 17. Freedom of organization. Political organizations operating in accordance with the provisions of this Act may be freely established.

Citizens are also free to join or leave political organizations, as they think fit.

Article 18. Political parties. Political parties legally established and enrolled in the Register of Citizens are public-law institutions with legal liability and an indefinite term of existence, except in the cases laid down in this Act.

...

Article 97. Definition. Civic electoral committees are political organizations of a temporary nature which nominate candidates for elective office to serve on municipal corporations.

...

Article 115. Associations with political objectives. Right of association. Definition. Associations with cultural and political education objectives are organizations with an indefinite term of existence which, without being a political party or a civic electoral committee, have as their essential aim the understanding, study and analysis of national issues."

(c) Labour Code (Congressional Decree No. 1441 and Amendments)

"Article 206. "Industrial association" (sindicato) shall mean a permanent association of employees or employers or persons carrying on an occupation or trade on their own account (self-employed persons) constituted exclusively for the study, advancement and defence of their common economic and social interests.

Such associations constituted by agricultural workers or employers in agricultural or stock-raising undertakings or persons carrying on an occupation or trade on their own account whose activities and work fall

within the sphere of agriculture or stock-raising shall be deemed to be agricultural associations (sindicatos campesinos).

All such associations not covered by the definition laid down in the last preceding paragraph shall be deemed to be urban associations (sindicatos urbanos).

The provisions of this chapter shall apply to all classes of associations, whether urban or agricultural."

Article 5 (e) (i) - The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration

112. The internal legislation relating to Article 5 (e) (i) of the Convention is as follows.

(a) The Constitution

"Article 69. Migrant labour and protection of migrant workers. Forms of labour involving the movement of workers outside their communities shall be the subject of protection and legislation which will ensure proper health, safety and social conditions and will prevent the payment of wages not in conformity with the law, the disintegration of such communities and, in general, any discriminatory treatment.

...

Article 101. Right to work. Work is a right of the individual and a social obligation. The labour system in Guatemala must be organized in accordance with the principles of social justice.

Article 102. Minimum social rights under labour legislation. The following are the minimum social rights forming the basis of labour legislation and action by tribunals and public authorities:

(a) The right to free choice of work and to satisfactory economic conditions which will guarantee a dignified existence for the worker and his family.

(b) There shall be equitable remuneration for all work, except as otherwise provided by law.

(c) Equal pay for equal work performed under equal conditions, with equal efficiency and equal seniority.

(d) The worker must be paid in legal tender. However, a farm worker, by choice, may receive food products for up to 30 per cent of his wages. In this case the employer must furnish these products at a price not exceeding their cost.

(e) Non-attachability of wages in the cases specified by law. Personal worker's tools may not be attached for any reason. However,

for the protection of a worker's family and by judicial order, a part of the wages may be withheld and remitted to the person who should receive it.

(f) Periodic fixing of the minimum wage in accordance with the law.

(g) The regular effective day-time working day may not exceed eight hours, nor the working week 44 hours, equivalent to 48 hours solely for the purposes of payment of wages. The regular effective night-time working day may not exceed six hours nor the working week 36 hours. The regular effective mixed working day may not exceed seven hours nor the working week 42 hours. All work actually performed outside the regular working day constitutes overtime and must be remunerated as such. The law shall determine the very special situations in which, as an exception, the provisions relating to the working day are not applicable.

Anyone who, under a provision of the law, by custom or by agreement with an employer, works less than 44 hours per week during the day-time, 36 hours per week during the night-time or 42 hours per week of mixed working days, shall be entitled to receive a full weekly wage.

Actual or effective working time shall be understood to mean all the time during which the worker remains under the orders or at the disposal of the employer.

(h) The right of the worker to a paid day of rest for every regular week of work or six consecutive days of labour. Holidays, recognized by law, shall also be paid.

(i) The right of the worker to 15 working days of paid leave annually for each completed year of continuous service, except in the case of workers in agriculture or livestock-raising who shall be entitled to 10 working days of paid leave. The leave must actually be taken and the employer may not provide special compensation in lieu of this right, except when the labour relationship has ceased after the right was acquired.

(j) Obligation of the employer to grant each year a bonus amounting to not less than 100 per cent of the monthly wage, or a previously established amount, if larger, to those workers who have worked without interruption for one year prior to the granting of the bonus. The manner of payment of the bonus shall be regulated by law. The bonus shall be paid pro rata to the time they have worked to workers who have furnished less than one year of service.

(k) Protection of women workers and regulation of the conditions under which they are employed. No distinction must be made for purposes of employment between married and single women. In the case of women workers, the law shall regulate the protection to be given to maternity, and no woman worker shall be required to do any work necessitating physical effort that might endanger her

pregnancy. A working mother shall be entitled to mandatory leave on full pay during the 30 days preceding childbirth and for 45 days thereafter. While nursing, she shall be entitled to two special rest periods during each working day. The pre-natal and post-natal leave periods shall be extended by medical prescription if her physical condition so warrants.

(l) Minors under 14 years of age may not be employed in any kind of work, with certain exceptions provided by law. The employment of minors in work beyond their physical capacity or which endangers their morals is prohibited.

(m) Protection and encouragement of work by the blind, the disabled and persons with physical, mental or sensory impairment.

(n) Other things being equal, preference to Guatemalan workers over foreigners, in the percentages specified by law. In the same circumstances, no Guatemalan worker may earn a lower wage than a foreigner, or have inferior working conditions or receive less financial reward or other benefits.

(ñ) Establishment of rules with which employers and workers must comply in individual and collective labour contracts. Employers and workers shall seek the economic development of the enterprise for their common benefit.

(o) Obligation upon the employer to indemnify a worker whom he dismisses unfairly or indirectly by paying him one month's wages for each continuous year of service, unless there is a more suitable statutory system providing greater benefits. In computing continuous service, account shall be taken of the date of commencement of the employment relationship, whatever it may be.

(p) Obligation of the employer to grant to the spouse or cohabitant, and to the minor or disabled children, of a worker who dies while in his employ a benefit equivalent to one month's wages for each year worked. This benefit shall be paid in monthly instalments in arrears, and its amount shall not be less than the last wage received by the worker.

If the death results from a cause that is a risk fully covered by the social security system, this obligation upon the employer shall cease. If the system does not fully cover the benefit, the employer must pay the difference.

(q) The right of workers freely to form and join trade unions. They may exercise this right without any discrimination and without having to obtain prior authorization, the sole requirement being that they fulfil the conditions established by law. Workers may not be dismissed for participating in the formation of a trade union and they shall enjoy this right from the time they notify the General Inspectorate of Labour.

Only persons who are Guatemalan by birth may participate in the organization, management and advising of trade unions. Exceptions shall be made in the case of government technical assistance and as provided in international treaties or inter-union agreements authorized by the Executive Branch.

(r) The establishment of economic and social welfare institutions granting workers' benefits of all kinds, especially sickness, retirement and survivors' benefits.

(s) If the employer fails to prove that a dismissal was justified, he must pay the worker, as compensation, one month's wages if the case is heard by a court, two months' wages if the judgment is appealed, and, if the proceedings in the case last more than two months, 50 per cent of his wages for each further month of the proceedings, up to a maximum in this case of six months.

(t) The State shall become a party to international and regional conventions and treaties on labour matters which grant workers better protection or conditions.

In such cases the provisions of such conventions and treaties shall be deemed to form part of the minimum rights enjoyed by workers in the Republic of Guatemala.

...

Article 103. Protective character of labour legislation. The laws regulating relations between employers and workers are conciliatory and protective of workers and shall deal with all relevant economic and social factors. The law shall take special account of the requirements of agricultural labour in those areas in which it is performed.

All labour disputes come under a separate jurisdiction. The norms to be applied in this jurisdiction and the bodies entrusted with their practical application shall be established by law.

...

Article 106. Unrenouncability of labour rights. The rights set forth in this section may not be renounced by workers. They may be supplemented through individual or collective negotiation in the manner established by law. To this end, the State shall encourage and protect collective negotiations. Stipulations implying renunciation, diminution, distortion or limitation of the rights of workers recognized in the Constitution, legislation, international treaties ratified by Guatemala, regulations and other provisions relating to labour shall be null and void ipso jure and shall not be binding on workers, even if expressed in a collective or individual labour contract, in an agreement or in any other document.

In case of doubt concerning the interpretation or scope of provisions of labour legislation, regulations or contracts, they shall be interpreted in the sense that is most favourable to the workers.

Article 107. Workers employed by the State. Workers employed by the State are in the service of the public administration and never of any political party, group, organization or individual.

Article 108. Rules governing workers employed by the State. The relations between the State and its decentralized or autonomous bodies and their workers are governed by the Civil Service Act, with the exception of those relations which are governed by the laws and regulations of such bodies.

Workers employed by the State or its decentralized or autonomous bodies who, by law or custom, receive benefits in excess of those provided for in the Civil Service Act shall retain such treatment.

Article 109. Workers not holding established posts. Workers employed by the State or its decentralized or autonomous bodies who do not hold established posts shall be treated on an equal footing with other State workers as regards salaries, benefits and rights.

Article 110. Compensation. Workers employed by the State shall, if unfairly dismissed, receive compensation equivalent to one month's salary for each year of continuous service. In no case shall this amount be more than 10 months' salary.

Article 111. Rules for decentralized bodies. Decentralized State bodies which perform economic functions similar to those of private enterprises shall be governed in their labour relations with their personnel by the ordinary labour laws, provided that these do not impair other acquired rights.

...

Article 113. Right to apply for public jobs or posts. Guatemalans have the right to apply for public jobs or posts and appointments shall be made solely on grounds of competence, suitability and integrity.

Article 114. Pension review. When a State worker who is receiving a retirement pension returns to a public post, such pension shall immediately cease, but, upon termination of the new employment, he shall have the right to apply for a review of his record and for the grant of the benefit resulting from the time served and the last salary earned during the new employment.

Depending on the possibilities of the State, the amounts assigned for retirement pensions, other pensions and family allowances shall be periodically revised.

Article 115. Free coverage for pensioners by the Guatemalan Social Security Institute. Persons receiving retirement pensions, other pensions or family allowances from the State or its autonomous or decentralized bodies are entitled to receive, free of charge, total coverage for the medical services of the Guatemalan Social Security Institute.

...

Article 117. Option to join system of inactive classes. Workers of decentralized or autonomous bodies who are not subject to deductions for the inactive classes fund and who do not enjoy its benefits may apply to join this system and, in such case, the agency concerned shall accept the application and order the responsible official to make the appropriate deductions."

(b) Labour Code (Congressional Decree No. 1441)

"Article 1. This Code shall govern the rights and obligations of employers and employees arising out of employment and shall set up institutions for the settlement of their disputes.

...

Article 6. The right to work of any person shall not be restricted except by a decision of the competent authority issued for reasons of public policy or national interest and based on the law. Consequently, no one may prevent another from engaging in any lawful occupation or activity in which he wishes to engage.

The right to work shall not be deemed to be restricted in cases where the authorities or private persons act in virtue of the rights or in fulfilment of the duties prescribed by law.

The assignment by an employer of his rights under a contract of employment or employer-employee relation, or the assignment of employees engaged by him without their clear and express consent (in which case such assignment shall not affect their contracts of employment, to their detriment) shall be prohibited. The alienation by the employer of the undertaking concerned shall not be included in this prohibition.

...

Article 9. Foreign languages shall not be used in the orders, instructions, notices or directions given to the employees.

Posts of persons who direct or exercise immediate supervision over the performance of work must be filled by persons who speak Spanish; nevertheless, if the work is performed in a district where the use of a native dialect is prevalent among the employees, the above-mentioned persons must speak the said dialect likewise.

Article 10. It shall not be lawful to exercise any kind of reprisals against employees with a view to preventing them, wholly or partly, from exercising the rights granted to them by the Constitution, this Code, the regulations thereunder or the other labour or social welfare laws, or because they have exercised or attempted to exercise the said rights.

...

Article 12. Any instruments or agreements which imply the waiving, diminution or compromise of the rights granted to employees by the Constitution, this Code, the regulations thereunder or the other labour or

social welfare laws shall be null and void ipso jure, and shall not be binding on the contracting parties even if they are contained in a works rule or contract of employment or other agreement of any kind.

...

Article 14. This Code and the regulations thereunder shall be statutory rules of a public nature, and all undertakings, whatever their character, which already exist or may hereafter be established in Guatemala, and also all the inhabitants of the Republic, without distinction of sex or nationality, shall be subject to their provisions (with the exception of the artificial persons under public law referred to in the second paragraph of section 2).

This shall not affect any exceptions arising out of the principles of international law or treaties.

...

Article 88. "Wages" (salario or sueldo) shall mean the remuneration which the employer must pay to the employee in virtue of the fulfilment of the contract of employment or employment relation in force between them. Without prejudice to the statutory exceptions, the employer shall be bound to pay remuneration to the employee for every service performed.

For the purpose of the payment of the said remuneration, it may be calculated as follows by agreement between the parties: (a) at time rates (by the month, fortnight, week, day or hour); (b) by the unit of work (at piece or task rates, for an agreed price or by the job); (c) by a share in the profits, sales or payments received by the employer; in no case, however, shall the employee be required to share in any risk of loss assumed by the latter.

Article 89. In fixing the amount of the wages in each class of work, the quantity and quality of the work and the climate and living conditions shall be taken into account.

Equal wages shall be paid for equal work performed in equivalent posts and under the same conditions of efficiency and seniority in the same undertaking; such wages shall include all the payments made to the employee in return for his ordinary work.

Article 90. Wages shall be paid exclusively in legal currency.

Wages shall not be paid either wholly or in part in the form of merchandise, vouchers, promissory notes, coupons or any other token alleged to represent legal currency. The maximum statutory penalties shall be imposed if orders for payment are not exchangeable except for merchandise purchased in specified establishments.

The prohibition laid down above shall not be deemed to cover the issue of promissory notes, vouchers or any other similar means of

calculation of wages, provided that at the end of each pay period the employer exchanges the said tokens for the exact equivalent in legal currency.

Notwithstanding the above provisions, agricultural workers who are employed in agricultural or stock-raising establishments may be paid not more than 30 per cent of the total amount of their wages in the form of food or other similar articles intended for their direct personal consumption or that of the members of their families who live with them and are financially dependent upon them, provided that the employer provides the said articles at cost price or less.

Similarly, any other benefits in cash or in kind given to employees in return for their services shall, unless there is an agreement to the contrary, be deemed to make up 30 per cent of the total amount of the wage payable.

Article 91. The amount of the wages shall be fixed by employers and employees, provided that it shall not be less than the wage fixed as a minimum wage in conformity with the next following chapter.

...

Article 94. Wages shall be paid directly to the employee or to a member of his family specified by him in writing or in an instrument drawn up by a labour authority.

Article 95. Except where otherwise agreed in writing, wages shall be paid at the place where the employees perform their work, during working hours or immediately after the termination thereof.

Wages shall not be paid at any place of amusement, place for the sale of goods to the public or for the sale of alcoholic beverages or in any other similar place, except in the case of employees who work in the kind of establishment in question.

...

Article 103. Every employee shall be entitled to a minimum wage sufficient to cover his normal needs in the material, moral and cultural sphere and also to enable him to carry out his duties as head of a family.

The said wage shall be fixed periodically as provided in this Chapter, with due regard for the conditions of each kind of employment, the special conditions prevailing in each region, and the financial capacity of the employers in each sphere of activity, whether intellectual, industrial, commercial, agricultural or stock-raising. Further, the fixing of the minimum wage shall take into account whether wages are paid at a time rate or by unit of work or by a share in the profits, sales, or payments received by the employer, and the necessary steps shall be taken to ensure that employees who are employed at piece rates, for an agreed price or by the job or task shall not be prejudiced.

...

Article 197. Every employer shall be bound to take the measures necessary for the adequate protection of the life, health and morality of his employees.

For this purpose he shall introduce at his own expense, within the time limit fixed by the General Labour Inspectorate and in agreement with the provisions of the regulations issued under this Chapter, all the hygienic and safety measures at the workplace requisite to ensure compliance with the above-mentioned obligation.

Article 198. Every employer shall be bound to observe and cause to be observed the measures prescribed by the Guatemalan Social Security Institution for the purpose of preventing the occurrence of industrial accidents and occupational diseases.

...

Article 200. In industrial or commercial undertakings the employer shall not permit his employees to sleep or take meals in the places where work is performed. The employer shall be bound to provide special rooms for both these purposes.

(c) Civil Service Act (Congressional Decree No. 1748)

"Article 1. Nature of the Act. This Act is an act of a public nature and the rights which it sets out are unrenounceable minimum guarantees for public servants susceptible to improvement in accordance with the needs and possibilities of the State. Consequently, any instruments or provisions which imply the waiving, diminution or compromise of rights established by the Constitution, set down in this Act or previously acquired shall be null and void ipso jure.

Article 2. Purpose. The general purpose of this Act is to regulate the relations between the Civil Service and its employees with a view to guaranteeing its efficiency, ensuring that the employees are treated fairly and encouraged in their work, and establishing the rules for the application of a personnel management system.

Article 3. Principles. The basic principles of this Act are as follows:

1. All Guatemalan citizens have the right to apply for public posts, and no one may be prevented from exercising that right if he possesses the qualifications and qualities required by law. Such appointments shall be made solely on grounds of competence, ability, efficiency and integrity.

2. In making appointments to public posts there shall be no discrimination based on race, sex, civil status, religion, birth, social or economic situation, or political opinions. A physical defect or ailment of the psycho-neurotic type shall not be an obstacle to holding a civil service post, provided that, in the

opinion of the National Civil Service Council, the condition does not interfere with the applicant's ability to do the work for which he is intended.

3. The national Civil Service system must promote the efficiency of the service and give its employees guarantees with regard to the exercise and defence of their rights.

4. Civil Service posts must be awarded on the basis of the competence, ability and integrity of the applicants. It is therefore necessary to establish a public competition procedure for making appointments to such posts, by establishing a civil service career. The law must specify those posts which, while their nature and purpose, must remain outside the public competition process.

5. There shall be equal pay for equal work performed under the same conditions, with equal efficiency and equal seniority. Consequently, civil service posts must be organized in accordance with a classification and evaluation system which takes into account the duties, responsibilities and requirements of each post by establishing a fair and uniform pay scale.

6. Civil service employees must be guaranteed against dismissal not based on legal grounds. Moreover, they must be subject to appropriate disciplinary rules and receive fair economic and social benefits.

Article 4. Public servant. For the purposes of this Act, a public servant is deemed to be an individual who occupies a post in the Civil Service by virtue of an appointment, contract or some other legally established relationship placing him under the obligation to render services or personally perform a task in exchange for a salary, under the continuous authority and direct control of the Civil Service itself.

Article 5. Additional sources. Cases not provided for in this Act must be dealt with in accordance with its basic principles, the rules of public service personnel management, equity, ordinary law and general legal principles.

...

Article 61. Rights of public servants. Public servants recruited by public competition shall enjoy the rights established in the Constitution and in the text of this Act, together with the following additional rights:

1. Not to be removed from their post except on the basis of duly substantiated grounds for dismissal provided for in this Act.

2. To be granted an annual period of 20 working days' paid leave after each year of continuous service.

Leave may not be accumulated and must be taken in continuous periods. There shall be no compensatory payment in lieu of leave

except where the right has been acquired and remains unexercised when for any reason the employment relationship comes to an end.

3. Thirty days for public servants exposed to risks of occupational disease, as listed in the corresponding regulations.

4. To leave, paid or unpaid, for sickness, pregnancy, study, military training, etc., in accordance with the corresponding regulations.

5. To be informed of the periodic reports on his performance.

6. To receive each year, in the first half of December, a cash bonus, to be paid in accordance with the Act and the corresponding regulations.

7. To receive compensation for the suppression of the post or unfair dismissal, direct or indirect, equivalent to one month's salary for each year of continuous service or, if the length of service is less than one year, a sum proportional to the period worked. The amount of compensation must be calculated in accordance with the average salary received during the last six months reckoned from the date of suppression of the post. In no case shall there be a right to more than five months' salary.

The compensation shall be paid in successive monthly instalments, starting from the suppression of the post and continuing until the appropriate number of instalments has been paid. It is understood that if, in connection with the prior right provided for in Article 46 of this Act, the public servant dismissed returns to the Civil Service at a salary equal to or greater than that which he was earning, the payment of compensation shall be suspended, starting from the day on which he takes up the new post. If the salary is less than before, compensation shall continue to be paid for the time necessary to cover the difference over the number of months for which there is entitlement to compensation. Public servants who choose to take up a retirement or other pension are excluded from this right but shall benefit from the above-mentioned compensation until the corresponding pension order is issued. The bodies responsible for these formalities must complete them within a maximum period of four months.

8. To benefit from the system of retirement, survivors' and other pensions in accordance with the corresponding law.

9. To receive a family allowance when fiscal conditions permit, in accordance with the corresponding law.

10. To be promoted to a higher-ranking and/or better paid post on the basis of proven efficiency and merit, in accordance with the provisions of this Act.

11. To a fair salary sufficient to ensure a decent life, in accordance with the functions he performs and the value of his work."

(d) State Civilian Inactive Classes Act (Congressional Decree No. 63-88)

"Article 1. Object. This Act shall govern the pensions set up in favour of themselves or members of their families by civilian State workers covered by Articles 144, 145 and 146 of the Political Constitution of the Republic of Guatemala and who are serving or have served in the legislative, executive or judicial branches. Civilian staff of the decentralized and autonomous bodies, of the Constitutional Court, the Supreme Electoral Tribunal and workers performing services under the unestablished post system in the above-mentioned bodies, if they so desire and do not have their own pension scheme, may voluntarily contribute to this system under the same conditions as laid down in this Act and its regulations and, once members of the scheme, may not cease to belong to it, unless they permanently retire from active service in one of the said bodies without having met the requirements to qualify for a pension.

Article 2. Civilian State worker. For the purposes of this Act, the term "civilian State worker" shall mean any official or employee working for the legislative, executive or judicial branches, the Constitutional Court, the Supreme Electoral Tribunal, or in the decentralized or autonomous State bodies by reason of election or appointment, under contract, in an unestablished post or by virtue of any other legally binding relationship requiring him to perform services in exchange for a previously established salary chargeable to the General State Budget or the budgets of the above-mentioned bodies themselves.

Members of the military protected by corresponding laws are excluded.

...

Article 4. Pensions. The pensions granted on the basis of this Act are as follows:

(a) For retirement.

(b) For disability.

(c) For widowhood.

(d) For orphanhood.

(e) In favour of parents.

(f) In favour of minor or handicapped brothers and sisters, grandchildren, nephews and nieces who at the death of the deceased were legally in his care, except where there are third parties with a superior right.

Article 5. Retirement pensions. The following are entitled to a retirement pension:

1. Voluntary retirement

(a) Workers with at least twenty (20) years of service, whatever their age.

(b) Anyone who has reached the age of fifty (50) and has accumulated at least ten years of service.

2. Compulsory retirement

Workers who have reached the age of sixty-five (65) and have accumulated at least ten (10) years of service, provided that during those ten years they have contributed to the scheme.

...

Article 26. Retirement pension review. When a person who is receiving a retirement pension under the State Civilian Inactive Classes scheme, in accordance with this Act or earlier provisions, returns to public service in a State body or a decentralized or autonomous State entity, his pension shall immediately cease, but he shall have the right to have his record reviewed to take into account the new period of service and to be granted the benefit resulting from that service if he has contributed to the scheme in accordance with this Act. Only the pensioner or his legal representative may exercise the right of review referred to in this Article.

...

Article 43. Assessment review. The pension assessments to which this Act refers may be reviewed if the party concerned so requests in writing, giving his reasons for disagreement and enclosing appropriate documentary evidence, provided that he has not indicated his acceptance of the assessment, in accordance with this Act. To this end, the National Civil Service Office shall review the assessments made and, if they need to be corrected or changed, shall follow the procedure laid down in Article 31. If the contested assessments are confirmed, the Office must issue the appropriate decision and notify the party concerned.

...

Article 52. Double time. Those who have worked in places legally declared to be unhealthy or in areas of conflict in accordance with previous legal provisions shall have the right to have service rendered during the period of validity of such provisions counted as double time.

Article 53. Compatibility with other systems. The State Civilian Inactive Classes and retirement systems in force or which may be set up within State entities in the future, with the exception of those established for the military, shall be considered independent [illegible]

Act so that there shall be no incompatibility between them, provided that the right to benefit from them has been acquired through work duly remunerated performed in each entity.

...

Article 59. Pension review. Depending on the State's possibilities, the amounts assigned to retirement and other pensions shall be periodically reviewed, in accordance with Article 114 of the Political Constitution of the Republic. Such reviews shall be made whenever, in the exercise of their duties, public servants obtain a salary increase, depending on the State's possibilities.

Article 60. Additional sources. Cases not provided for in this Act must be dealt with in accordance with its basic principles, ordinary law and general legal principles."

(e) Regulations of the State Civilian Inactive Classes Act (Government Order No. 1220-88)

"Article 22. Benefits. Emergency bonus for pensioners. For the purposes of Article 24 of the Act, all pensioners in the scheme shall receive an emergency bonus granted to beneficiaries in the amounts established by the special provisions regulating the said bonus.

Article 23. New assessment. The party concerned may ask the office for a new assessment for services not computed, which must be made provided that the corresponding order has not been issued and the amount of the pension increases; in this case, the procedure indicated in Article 31 of the Act shall be followed. If on the basis of the documents submitted it is calculated that the amount of the assessment remains unchanged, the office shall notify the party concerned without taking any further action."

(f) Civil Service Wages Act (Congressional Decree No. 11-73)

"Article 1. This Act establishes a system of fair and decent remuneration for public servants with a view to promoting the efficiency of the civil service and ensuring compliance with the principle of equal pay for equal work, performed under the same conditions, with equal efficiency and seniority.

...

Article 4. Wages. Any service or task which does not have to be performed free of charge by reason of law or judgment must be fairly remunerated by payment of a wage.

"Wages" shall mean the remuneration which the State must pay to any public servant occupying a post to which he has been assigned by appointment, under contract or by virtue of some other legally established relationship.

Article 15. For payment purposes, Civil Service wages are subject to the following rules:

1. Wages must be paid fortnightly or monthly in arrears. In special cases, the Ministry of Public Finance may vary this mode of payment in accordance with the needs and possibilities of the State.

2. Payment must be made in cash or by cheque, in accordance with the system established by the Ministry of Public Finance.

3. Wages must be paid directly to the public servant, his legal representative or a duly authorized person, at the places previously determined by the Ministry of Public Finance.

4. All wage payments must be charged to the appropriate headings of the State Budget.

...

Article 17. Integrity of wages. The wages of public servants may not be subjected to deductions or attachments beyond those authorized by the Act or court order.

Attachment orders must be issued by the competent judge and communicated to the National Treasury or the corresponding pay office, which must proceed to withhold the appropriate amount.

Article 18. Non-attachability. The wages earned by public servants may not be attached, except in the percentages authorized by this Act. Accordingly, wages not exceeding forty quetzals per month may not be attached; other wages may be attached in the following proportions:

1. Up to ten per cent of wages of more than forty quetzals and less than one hundred quetzals per month.

2. Up to fifteen per cent of wages of more than one hundred quetzals and less than two hundred quetzals per month.

3. Up to twenty per cent of wages of more than two hundred quetzals and less than three hundred quetzals per month.

4. Up to twenty-five per cent of monthly wages of more than three hundred quetzals per month.

Article 19. Notwithstanding the provisions of the preceding article, up to fifty per cent of wages of all classes shall be attachable in order to meet liabilities for the payment of current maintenance allowances or maintenance allowances legally owed.

...

Article 21. Disposal of wages. Wages of one hundred quetzals per month or less may not be assigned, exchanged or encumbered in favour of

servant who live and depend economically on him, except to the extent to which they are attachable. Transactions between the public servant and cooperatives and credit or other similar legally established institutions shall be an exception to this rule."

(g) Order No. 788 of the Board of Management of the Guatemalan Social Security Institute

"Article 1. These Regulations govern the protection provided by the Social Security System in relation to:

(a) Disability

(b) Old age

(c) Death (burial expenses)

(d) Orphanhood

(e) Widowhood

(f) Other survivors.

This protection is provided through the Guatemalan Social Security Institute, referred to hereinafter as the "Institute", in accordance with its organization act.

Article 2. The disability, old age and survivors' protection includes all those insured under the Social Security System, in accordance with the provisions of these Regulations, whose application shall be gradually and progressively extended as regards the sectors of workers or employers and the persons to be protected.

...

Article 48. No beneficiary may simultaneously receive two or more pensions from the Institute for the same risk and for the same insured. In the event of concurrent claims, the beneficiary must be awarded the most favourable pension.

A beneficiary may simultaneously receive two or more pensions from the Institute when the claim originates in one or more risks involving different insured.

Article 49. The receipt of a disability, old age or survivor's pension is compatible with the receipt of allowances for temporary disability determined under the Institute's other programmes.

...

Article 57. Employers must provide the Institute with data relating to the Social Security System at its request, within the reasonable period laid down for this purpose.

...

Article 61. All infringements or violations, by commission or omission, of the provisions contained in the regulations of the Disability, Old Age and Survivors' Protection Programme which give rise to penalties shall be social security misdemeanours."

Article 5 (e) (ii) - The right to form and join trade unions

113. The internal legislation relating to Article 5 (e) (ii) of the Convention is as follows.

(a) The Constitution

"Article 5. Freedom of action. Everyone has the right to do whatever the law does not prohibit; no one shall be obliged to carry out orders which are not based on and issued in accordance with the law. No one may be persecuted or molested for his opinions or for acts which do not involve a breach of the law."

...

Article 34. Right of association. The right of free association is recognized.

No one shall be required to join or be a member of a group or association established for self-defence or a similar purpose. The case of professional associations shall constitute an exception to this rule.

...

Article 44. Rights inherent in the human person. The rights and guarantees granted by the Constitution do not exclude others which, although not expressly referred to therein, are inherent in the human person.

The interests of society shall take precedence over private interests.

Laws, governmental orders and orders of any other kind which diminish, restrict or distort rights guaranteed by the Constitution shall be null and void ipso jure.

...

Article 102. Minimum social rights under labour legislation. The following are the minimum social rights forming the basis of labour legislation and action by tribunals and public authorities:

...

(q) The right of workers freely to form and join trade unions. They may exercise this right without any discrimination and

being that they fulfil the conditions established by law. Workers may not be dismissed for participating in the formation of a trade union and they shall enjoy this right from the time they notify the General Inspectorate of Labour.

Only persons who are Guatemalan by birth may participate in the organization, management and advising of trade unions. Exceptions shall be made in the case of government technical assistance and as provided in international treaties or inter-union agreements authorized by the Executive Branch.

Article 103. Protective character of labour legislation. The laws regulating relations between employers and workers are conciliatory and protective of workers and shall deal with all relevant economic and social factors. The law shall take special account of the requirements of agricultural labour in those areas in which it is performed.

All labour disputes come under a separate jurisdiction. The norms to be applied in this jurisdiction and the bodies entrusted with their practical application shall be established by law.

Article 104. The right to strike and to lock out. The right to strike and to lock out, exercised in accordance with the law, after all conciliation procedures have been exhausted, is recognized. These rights may be exercised only for economic or social reasons. The cases and situations in which strikes and work stoppages shall not be permitted shall be determined by legislation.

...

Article 106. Unrenounceability of labour rights. The rights set forth in this section may not be renounced by workers. They may be supplemented through individual or collective negotiation in the manner established by law. To this end, the State shall encourage and protect collective negotiations. Stipulations implying renunciation, diminution, distortion or limitation of the rights of workers recognized in the Constitution, legislation, international treaties ratified by Guatemala, regulations and other provisions relating to labour shall be null and void ipso jure and shall not be binding on workers, even if expressed in a collective or individual labour contract, in an agreement or in any other document.

In case of doubt concerning the interpretation or scope of provisions of labour legislation, regulations or contracts, they shall be interpreted in the sense that is most favourable to the workers.

...

Article 108. Rules governing workers employed by the State. The relations between the State and its decentralized or autonomous bodies and their workers are governed by the Civil Service Act, with the exception of those relations which are governed by the laws and regulations of such bodies.

Workers employed by the State or its decentralized or autonomous bodies who, by law or custom, receive benefits in excess of those provided for in the Civil Service Act shall retain such treatment.

...

Article 116. Regulation of the right to strike for State workers. Associations, groupings and trade unions formed by workers employed by the State or its decentralized or autonomous bodies may not participate in party political activities.

The right of workers employed by the State or its decentralized or autonomous bodies to strike is recognized. This right may be exercised only in the manner prescribed by the law on the matter and shall in no case affect the maintenance of essential public services."

(b) State Worker Unionization and Strike Regulation Act (Congressional Decree No. 71-86)

"Article 1. Right to form trade unions. Employees of the State and its decentralized and autonomous bodies may exercise their rights freely to form trade unions and to strike in accordance with the provisions of this Act, subject to the exceptions established by the corresponding legislation concerning the Guatemalan Army and the National Police.

Article 2. Establishment, organization and operation. In connection with the establishment and organization of trade unions, federations and confederations for employees of the State and its decentralized and autonomous bodies, and in connection with the regulation of their operation and the exercise of their rights, employees of the State and its decentralized and autonomous bodies shall be subject to the provisions of the Labour Code, Congressional Decree No. 1441, in so far as it is applicable and not contrary to constitutional principles.

Article 3. Forms of trade union organization. The employees referred to in the preceding article may establish and organize trade unions by State entity, ministry, autonomous or decentralized body or by branch or trade.

Article 4. Procedures. In order to exercise the right to strike, employees of the State and its autonomous and decentralized bodies shall observe the procedures laid down in the Labour Code, Congressional Decree No. 1441, in so far as applicable, and the following provisions:

(a) The direct channel shall be obligatory for the conciliatory negotiation of pacts or collective agreements concerning working conditions or any other matter provided for by law, the legal possibilities of the budget of revenue and expenditure of the State or the autonomous and decentralized bodies involved in the socio-economic dispute always being taken into account in the request. The said channel shall be considered to be exhausted if within thirty days of the submission of the request by the interested party no agreement has been reached, unless the

(b) Workers may resort to strike action only on behalf of claims of an economic or social nature, after the direct channel has been exhausted and after complying with the requirements laid down by law.

(c) No strike may be carried out with the intention of interfering with the essential services referred to in Article 243 of the Labour Code, Congressional Decree No. 1441, or others established by law, as well as those stipulated by the Executive Branch in compliance with the Public Order Act.

(d) Strikes motivated by inter-union solidarity or by interests other than economic and social claims are strictly prohibited.

(e) Workers and officials who have participated in a de facto strike or one declared illegal by the competent Labour and Social Security Courts shall be liable to the penalties established by Article 244 of the Labour Code, Congressional Decree No. 1441, without prejudice to the penal and civil liabilities they may have incurred.

Article 5. Parties. The parties are:

(a) Direct channel: for the State, the officials who manage the body concerned, and for the workers the trade union or ad hoc committee in the form laid down in Article 374 of the Labour Code. Any other friendly arbitrators, whether from the trade union side or representatives of the Civil Service Office or the Government Procurator's Office, may also intervene; and

(b) Adjudicatory channel (conciliation): for the State and its decentralized and autonomous bodies; representation shall be exercised by whoever is specifically appointed by the highest authority of the Ministry of Public Finance in both the Civil Service Office and the agency concerned; for the workers, the corresponding trade union or the ad hoc committee established in accordance with the law.

Article 8. Exemptions. Trade union organizations and the other organizations to which this Act applies are exempt:

(a) From stamp duty on all deeds, documents and legal proceedings brought directly before the administrative authorities and labour courts.

(b) Payment of the cost of publication in the Diario Oficial (Official Gazete) where required by law."

(c) Labour Code (Congressional Decree No. 1441)

"Article 206. "Industrial association" (sindicato) shall mean a permanent association of employees or employers or persons carrying on an

constituted exclusively for the study, advancement and defence of their common economic and social interests.

Such associations constituted by agricultural workers or employers in agricultural or stock-raising undertakings or persons carrying on an occupation or trade on their own account whose activities and work fall within the sphere of agriculture or stock-raising shall be deemed to be agricultural associations (sindicatos campesinos).

All such associations not covered by the definition laid down in the last preceding paragraph shall be deemed to be urban associations (sindicatos urbanos).

The provisions of this chapter shall apply to all classes of associations, whether urban or agricultural.

...

Article 212. Every employee who has attained the age of fourteen years may be admitted to membership of an industrial association, provided nevertheless that minors shall not be members of the executive committee or advisory board of any such association.

It shall not be lawful for any person to be a member of two or more associations at the same time.

It shall not be lawful for the representatives of the employer or other similar employees who on account of their high position in the undertaking are compelled by preference to defend the interests of the employer to belong to an industrial association of employees. All such exceptional cases shall be specified in the rules of the association concerned, and shall be based exclusively on the nature of the posts to be excluded and not on the persons who hold the said posts. The said exceptions must be approved and countersigned by the General Labour Inspectorate.

...

Article 215. Industrial associations shall be classified according to their nature as urban associations and agricultural associations, and also as: (a) craft unions, when they are formed by employees engaged in the same occupation or trade or, in the case of employers, in the same economic activity, and (b) works unions, when they are formed by employees engaged in different occupations or trades who are employed in one and the same undertaking or in two or more similar undertakings.

Article 216. An industrial association shall not be formed with less than 20 employees, and an industrial association for employers shall not be formed with less than five employers.

The administrative formalities prescribed by law shall be instituted within a peremptory time limit of 15 days after the date on which the members decide to form the industrial association concerned.

...

Article 232. Two or more industrial associations of the same kind may amalgamate for the purpose of forming a single association, in which case the procedure laid down by law shall be followed.

If the amalgamation is approved, the corresponding Order shall provide for the cancellation of the registrations of the associations which have been amalgamated and of their status as bodies corporate. Pending such cancellation, the industrial associations in question shall retain their individual status and may refrain from implementing the amalgamation agreement.

Article 233. Two or more industrial associations of employees or employers may form a federation, and two or more federations of employees or employers may form a confederation.

Federations and confederations may be national or regional in character or may be formed for specified branches of production; they shall be governed by the provisions of this Part in so far as the said provisions are applicable."

(d) Amendments to the Labour Code (Congressional Decree No. 64-92)

"Article 15. Article 209 is amended to read as follows:

"Article 209. Workers may not be dismissed for participating in the formation of a trade union and shall enjoy this right of irremovability starting from the moment at which they notify the General Labour Inspectorate that they are forming a union, the protection continuing for sixty (60) days after the publication of its constitution in the Diario Oficial.

If the provisions of this article are disregarded, the worker or workers concerned shall be reinstated within twenty-four (24) hours and the person responsible shall be liable to a fine of one thousand quetzals (Q. 1,000), and in addition shall pay the wages which the workers concerned failed to receive.

In the case dealt with in this article, if a worker gives grounds for dismissal in accordance with Article 77 of this Code, the employer shall institute employment contract cancellation proceedings for the sole purpose of obtaining authorization for dismissal."

Article 5 (e) (iii) - The right to housing

114. The internal legislation relating to Article 5 (e) (iii) of the Convention is as follows.

(a) The Constitution

"Article 23. Inviolability of domicile. The domicile is inviolable. No one may enter the home of another without the permission of the

occupier, except on the written order of a competent judge in which the grounds for the action are specified, and never before 6.00 a.m. or after 6.00 p.m. Such entry may only be made in the presence of the party concerned or of his representative.

...

Article 39. Private property. The ownership of private property is guaranteed as an inherent right of the human person. Everyone may freely dispose of his property in accordance with the law.

The State guarantees the exercise of this right and shall create conditions which will facilitate the use and enjoyment of property by its owner, so that advancement of the individual and national development may be achieved, for the benefit of all Guatemalans.

...

Article 41. Protection of property rights. Property rights may not be restricted in any way by reason of political activity or a political offence. Confiscation of property and the imposition of confiscatory fines are prohibited. In no case may fines exceed the value of unpaid tax.

...

Article 44. Rights inherent in the human person. The rights and guarantees granted by the Constitution do not exclude others which, although not expressly referred to therein, are inherent in the human person.

The interests of society shall take precedence over private interests.

Laws, governmental orders and orders of any other kind which diminish, restrict or distort rights guaranteed by the Constitution shall be null and void ipso jure.

...

Article 67. Protection of indigenous land and of indigenous agricultural cooperatives. Land belonging to indigenous cooperatives, communities or any other form of communal or collective agrarian landholding, as well as family property and low-cost housing, shall enjoy the special protection of the State and preferential credit and technical assistance which will guarantee their legal possession and development, in order to ensure a better quality of life for all the inhabitants.

Indigenous and other communities holding land which has historically belonged to them and which they have traditionally administered in a special manner shall maintain this system.

Article 68. Land for indigenous communities. The State shall, under special programmes and appropriate legislation, make State land available to indigenous communities which need it for their development.

...

Article 105. Housing of workers. The State, through special bodies, shall support the planning and construction of housing developments and shall establish suitable financing systems for carrying out the various projects, so that workers may be able to apply for suitable housing meeting health requirements.

The owners of enterprises remain obliged to provide for their workers, in the cases specified by law, housing which meets the above-mentioned requirements.

...

Article 119. Duties of the State. The fundamental duties of the State are:

...

(d) To seek to raise the standard of living of all the country's inhabitants and to ensure the well-being of the family.

...

(g) To promote, as a matter of priority, the construction of low-cost housing, by means of appropriate systems of financing so that the maximum number of Guatemalan families may own their homes; in the case of emergency or cooperative housing, the system of occupancy may be different.

...

(j) To encourage actively rural development programmes that tend to increase and diversify the country's production on the basis of the principle of private property and the protection of family assets; technical and economic assistance is to be given to peasants and craftsmen.

(k) To protect capital formation, saving and investment."

(b) Banco Nacional de la Vivienda Organization Act (Congressional Decree No. 2-73)

"Article 1. Establishment. The Banco Nacional de la Vivienda (BANVI) is established as a decentralized, autonomous State body with juridical personality, its own assets and full capacity to acquire rights and assume obligations.

Article 2. Objective. The Banco Nacional de la Vivienda is a financial organ of the State whose objective is to implement urban development and housing construction programmes which meet the needs of lower-income groups. To this end, it utilizes its own resources and those which it attracts or obtains in accordance with the provisions of this

Act; with the same funds it meets the demand for resources for housing and other activities.

...

Article 5. Functions. BANVI is organized and functions in accordance with its objective, being authorized to carry out the operations provided for in this Act and its regulations and, in so far as they are applicable, in the Bank Act, the Private Financial Company Act (Decree-Law No. 208 of the Head of Government of the Republic), the Organization Act of the Bank of Guatemala, the Monetary Act and other banking and ordinary laws.

The functions of the Banco Nacional de la Vivienda shall include:

(a) Helping to overcome the existing national housing shortage.

(b) Creating the necessary mechanisms and incentives permitted by the country's banking and financial laws to promote and attract savings primarily for constructing housing. Likewise, it may create instruments and mechanisms designed to give financial resources greater mobility by issuing, pricing and trading in bonds.

(c) Coordinating and participating with the appropriate authorities in the drawing up of urban development and housing plans which it itself has not initiated, while ensuring, jointly with the said authorities, that the results properly meet economic and social development needs.

(d) Promoting and implementing urban renewal projects on its own account.

(e) Investing in the acquisition of movable and immovable property in order to implement its short-, medium- and long-term programmes, with a view to meeting the demand from the various strata of society and avoiding population settlement in areas which fail to meet the requirements of health and habitability.

(f) Undertaking construction projects, directly or by contracting for the services of private construction enterprises, in order to provide adequate housing for the people of the country, and carrying out works to ensure the supply of essential public services.

(g) Ensuring, together with the appropriate authorities, that the cost of implementing housing and urban development plans and programmes is not out of proportion to the levels of income of the beneficiaries of such programmes.

(h) Promoting and participating in scientific research aimed at improving productivity in the use of building techniques and materials.

(i) Promoting, and when necessary participating in, the establishment and expansion of enterprises which provide technical services or supply building materials.

(j) Concluding contracts to buy and sell, lease, with and without option to purchase, exchange and convey movable and immovable property connected with its urban development and housing programmes and any others which it is authorized to conclude.

(k) Collaborating with the private sector on the implementation of specific rural housing projects.

(l) Participating with the private sector in the preparation and implementation of urban development and housing programmes, and carrying out on its own account any type of programme or operation for developing its functions.

(m) Collaborating with the municipalities of the Republic in formulating urban development projects and, when the resources available so permit, providing them with technical and financial assistance, individually or collectively, with the implementation of those projects.

(n) Performing other functions for which it is authorized, in accordance with the law."

Article 5 (e) (iv) - The right to public health, medical care, social security and social services

115. The internal legislation relating to Article 5 (e) (iv) of the Convention is as follows.

The Constitution

"Article 1. Protection of the individual. The State of Guatemala is constituted to protect the individual and the family; its supreme aim is the achievement of the common good.

Article 2. Duties of the State. It is the duty of the State to guarantee, for the inhabitants of the Republic, life, liberty, justice, security, peace and the full development of the individual.

Article 3. The right to life. The State guarantees and protects human life from the time of conception, as well as the integrity and security of the person.

Article 4. Freedom and equality. In Guatemala all human beings are free and equal in dignity and in rights. Men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition which impairs his dignity. Human beings should behave fraternally towards each other.

...

Article 93. Right to health. The enjoyment of health is a fundamental right of the human person, without any discrimination.

Article 94. Obligation of the State regarding health and social welfare. The State shall see to the health and social welfare of all its inhabitants. Through its institutions it shall carry out measures of prevention, promotion, recovery, rehabilitation and coordination and other related measures, in order to ensure the fullest physical, mental and social well-being for its inhabitants.

Article 95. Health: a public asset. The health of the country's inhabitants is a public asset. All persons and institutions shall be required to see to its preservation and restoration.

Article 96. Product quality control. The State shall control the quality of food products, pharmaceuticals, chemicals and all other products which may affect the health and welfare of its inhabitants. It shall see to the establishment and planning of primary health care and the improvement of basic environmental sanitation in the least protected communities.

Article 97. The environment and ecological equilibrium. The State, the municipalities and the inhabitants of the national territory shall be obliged to foster social, economic and technological development aimed at preventing contamination of the environment and maintaining ecological equilibrium. The necessary standards should be laid down to ensure that the fauna, flora, land and waters are used and developed rationally and are not plundered.

Article 98. Participation of communities in health programmes. Communities have the right and duty to participate actively in the planning, execution and evaluation of health programmes.

Article 99. Food and nutrition. The State shall ensure that the food and the nutrition of the population meet minimum health requirements. The specialized agencies of the State shall coordinate their action among themselves and with international bodies concerned with health in order to achieve an effective national food system.

Article 100. Social security. The State recognizes and guarantees the right to social security for the benefit of the inhabitants of the country. The social security system is established as a public service of national, unitary and obligatory character.

The State, the employers and the workers covered by the system, except only as provided in Article 88 of this Constitution, shall be obliged to contribute to the financing of the system and shall have the right to participate in its management and to seek its progressive improvement.

The administration of the social security system shall be the responsibility of the Guatemalan Social Security Institute, an autonomous body with juridical personality and its own assets and functions. The Institute shall enjoy full exemption from all taxes, contributions and

rates, already established or to be established in the future. The Guatemalan Social Security Institute must cooperate with the health institutions in a coordinated manner.

The Executive shall include annually in the State Income and Expenditure Budget a specific appropriation to cover the contribution payable by the State as such and as employer. This appropriation may not be transferred or cancelled during the financial year and its amount shall be determined on the basis of expert actuarial studies carried out by the Institute.

Administrative remedies may be sought and action under administrative law may be taken, as provided by law, against decisions taken in this field. Cases involving benefits payable under the system shall be heard by the labour courts or social welfare tribunals."

Article 5 (e) (v) - The right to education and training

116. The internal legislation relating to Article 5 (e) (v) of the Convention is as follows.

(a) The Constitution

"Article 5. Freedom of action. Everyone has the right to do whatever the law does not prohibit; no one shall be obliged to carry out orders which are not based on and issued in accordance with the law. No one may be persecuted or molested for his opinions or for acts which do not involve a breach of the law.

...

Article 44. Rights inherent in the human person. The rights and guarantees granted by the Constitution do not exclude others which, although not expressly referred to therein, are inherent in the human person.

The interests of society shall take precedence over private interests.

Laws, governmental orders and orders of any other kind which diminish, restrict or distort rights guaranteed by the Constitution shall be null and void ipso jure.

...

Article 46. Primacy of international law. It is established as a general principle that, in matters of human rights, treaties and conventions accepted and ratified by Guatemala shall take precedence over internal law.

...

Article 71. Right to education. Freedom of education and of teaching criteria is guaranteed. The State shall be obliged to provide education

for its inhabitants without any discrimination. The establishment and maintenance of cultural education centres and museums are declared to be necessary and in the public interest.

Article 72. Purposes of education. The primary purpose of education is the full development of the human person and acquisition of knowledge of the Nation and of the world and of their culture.

Education, teaching, social training and systematic instruction in the Constitution of the Republic and human rights are declared to be in the national interest.

Article 73. Freedom of education and State financial assistance. The family is the source of education and parents have the right to choose the education to be given to their minor children. The State may subsidize non-fee-charging private educational establishments, which shall be governed by legislation. Private educational establishments shall be subject to State inspection. They must at least follow official curricula and syllabuses. As cultural establishments, they shall enjoy exemption from all forms of taxes and rates.

Religious instruction shall be optional in State establishments and may be given during regular hours without discrimination of any kind.

The State shall contribute to the support of religious instruction without discrimination of any kind.

Article 74. Compulsory education. Inhabitants have the right and obligation to receive initial, pre-primary, primary and basic education within the age limits established by law.

No charge shall be made for education provided by the State.

The State shall provide and promote educational scholarships and loans.

Education in the sciences, technology and the humanities are objectives which the State must continuously shape and develop.

The State shall promote special education, diversified education and out-of-school education.

Article 75. Promotion of literacy. The promotion of literacy is declared to be a matter of national urgency and it shall be a social duty to contribute to it. The State must organize and encourage it by providing all necessary resources.

Article 76. The educational system and bilingual instruction. The administration of the educational system shall be decentralized and regionalized.

In schools established in areas with a predominantly indigenous population, instruction shall preferably be given in bilingual form.

Article 77. Obligations of the owners of enterprises. The owners of industrial, agricultural, livestock-raising and commercial enterprises shall be obliged to establish and maintain, as provided by law, schools, nurseries and cultural centres for their workers and their population of school age.

Article 78. Teachers. The State shall promote the financial, social and cultural advancement of teachers, including entitlement to a retirement pension which will enable them to live in dignity.

The rights acquired by Guatemalan teachers shall be minimum rights and shall be unrenounceable. These matters shall be regulated by law.

Article 79. Agricultural education. Agricultural studies and apprenticeship, agricultural operations, agricultural marketing and industrialization of agriculture are declared to be in the national interest. The National Central School of Agriculture is established as a non-governmental, autonomous institution with juridical personality and its own assets. It must organize, direct and develop national curricula for instruction in agriculture and forestry at the intermediate education level. It shall be governed by its own statutes and shall be allocated not less than 5 per cent of the regular budget of the Ministry of Agriculture.

Article 80. Promotion of science and technology. The State recognizes and shall promote science and technology as fundamental bases for national development. The law shall regulate all matters relating to these subjects.

Article 81. Titles and diplomas. Titles and diplomas, the granting of which is a responsibility of the State shall have full legal validity. The rights acquired by the practice of the professions authorized by such titles shall be respected and no regulations of any kind may be made which limit or restrict them.

Article 82. Autonomy of the University of San Carlos of Guatemala. The University of San Carlos of Guatemala is an autonomous institution with juridical personality. As the only State university, it shall have exclusive responsibility for directing, organizing and developing State higher education and State vocational education at the university level and for the dissemination of culture in all its forms. It shall promote by all the means available to it research in all the spheres of human knowledge and it shall cooperate in the study and solution of national problems.

It shall be governed by its Organization Act and by its own statutes and rules and the principle of representation of faculty, graduates and students shall be observed in the composition of its governing bodies.

...

Article 85. Private universities. The private universities, which are independent institutions, shall be responsible for organizing and developing the private higher education of the Nation with the aim of

contributing to vocational training, scientific research, the dissemination of culture and the study and solution of national problems.

Once a private university has been authorized to function, it shall have juridical personality and freedom to establish its faculties and institutions, and to develop its academic and teaching activities and its curricula.

Article 86. The Council of Private Higher Education. The Council of Private Higher Education shall be responsible for ensuring maintenance of the academic level of the private universities, without prejudice to their independence, and for approving the establishment of new universities. It shall be composed of two representatives from the University of San Carlos of Guatemala, two representatives from the private universities and one representative elected by the presidents of the vocational colleges who shall not hold a university post.

The presidency of the Council shall be held by the members in rotation. These matters shall be regulated by law.

Article 87. Recognition of degrees, title and diplomas and admissions. Only degrees, title and diplomas granted by universities which are legally authorized and organized to function in Guatemala shall be recognized, except as provided in international treaties.

The University of San Carlos of Guatemala is the only university empowered to decide on the admission of professional graduates of foreign universities, to establish the prior requirements to be met by such applicants for admission and to recognize university titles and diplomas covered by international treaties. Title granted by Central American universities shall have full validity in Guatemala once basic standardization of curricula has been achieved.

No legislation may be enacted which grants privileges prejudicial to anyone practising a profession for which he has the qualification or which he has already been lawfully authorized to practise.

Article 88. Exemptions and deductions from taxes. Universities shall be exempted from the payment of all kinds of taxes, rates and assessments, with no exception whatsoever.

Gifts made to universities and to scientific or cultural institutions shall be deductible from net tax imposed by the income tax authorities.

The State may lend financial assistance to private universities for the attainment of their purposes.

The University of San Carlos of Guatemala and the private universities may not be subjected to measures of execution or take-over, except, in the case of the private universities, where the claim against them arises from a civil, commercial or labour contract.

Article 89. Granting of degrees, titles and diplomas. Only universities which are legally entitled to do so may grant degrees and issue titles and diplomas in higher education.

Article 90. Professional associations. It shall be compulsory for university professionals to join their professional association, for the purpose of the moral, scientific, technical and material advancement of the university professions and control of their practice.

Professional associations, as occupational associations with juridical personality, shall function in accordance with the Law on Compulsory Membership of Professional Associations and the statutes of each such association shall be approved independently of the universities of which its members are graduates.

They shall help to strengthen the autonomy of the University of San Carlos of Guatemala and further the aims and purposes of all the universities of Guatemala.

The universities of Guatemala may call on the professional associations to assist in any matter connected with raising the scientific, technical and cultural level of the university professions."

(b) The Constitution (Transitional and Final Provisions)

"Article 13. Allocation for the anti-illiteracy campaign. One per cent of the General State Revenue Budget shall be allocated to the anti-illiteracy campaign with the aim of eliminating illiteracy in the working population during the first three Governments under this Constitution. The allocation will be deducted during these periods from the percentage established in Article 91 of this Constitution.

Article 14. National Committee for the Elimination of Illiteracy. The approval of programmes and budgets for the elimination of illiteracy and the supervision of their implementation shall be the responsibility of a National Committee for the Elimination of Illiteracy consisting of representatives of the public and private sectors, half plus one of its members being from the public sector. A law on the elimination of illiteracy shall be enacted by the Congress of the Republic during the six months following the entry into force of this Constitution."

Article 5 (e) (vi) - The right to equal participation in cultural activities

117. The internal legislation relating to Article 5 (e) (vi) of the Convention is as follows.

The Constitution

"Article 4. Freedom and equality. In Guatemala all human beings are free and equal in dignity and in rights. Men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition which impairs his dignity. Human beings should behave fraternally towards each other.

Article 5. Freedom of action. Everyone has the right to do whatever the law does not prohibit; no one shall be obliged to carry out orders which are not based on and issued in accordance with the law. No one may be persecuted or molested for his opinions or for acts which do not involve a breach of the law.

...

Article 57. Right to culture. Everyone shall have the right to participate freely in the cultural and artistic life of the community and to benefit from the scientific and technological progress of the Nation.

Article 58. Cultural identity. The right of persons and communities to their cultural identity, in accordance with their values, their language and their customs, is recognized.

Article 59. Protection and study of culture. It is an essential obligation of the State to protect, develop and disseminate the national culture, to enact laws and make regulations tending to enrich, restore, preserve and recover it; to promote and regulate the scientific study of it and to develop and use appropriate technology.

Article 60. Cultural heritage. The palaeontological, archaeological, historical and artistic assets and treasures of Guatemala constitute the cultural heritage of the Nation and are placed under the protection of the State. Their alienation, export or alteration are prohibited except in the cases specified by law.

Article 61. Protection of the cultural heritage. The State shall devote special attention to archaeological and monumental sites and to the Cultural Centre of Guatemala in order to preserve their characteristics and maintain their value and their cultural assets. Special conservation measures shall be taken with respect to Tikal National Park, Quiriga Archaeological Park and the city of Antigua Guatemala, since they have been declared to form part of the World Cultural Heritage, as well as with respect to such sites as are similarly recognized.

Article 62. Protection of art, folklore and traditional handicrafts. National artistic expression, popular art, folklore and indigenous handicrafts and industries must be given special protection by the State in order to preserve their authenticity. The State shall foster the opening of national and international markets in order to ensure a free market for the work of artists and handicraft workers, and it shall promote the production of such items and appropriate technological development.

Article 63. Right of creative expression. The State shall guarantee the right of creative expression. It shall support and encourage Guatemalan scientists, intellectuals and artists and shall promote their training and professional and financial advancement.

Article 64. Natural heritage. The conservation, protection and improvement of the natural heritage of the Nation is declared to be in the national interest. The State shall encourage the establishment of national

parks and nature reserves and sanctuaries, which shall be inalienable. A law shall guarantee their protection and the protection of the fauna and flora they contain.

Article 65. Preservation and promotion of culture. The activities of the State in the area of preservation and promotion of culture and its manifestations shall be the responsibility of a specific body having its own budget."

Article 5 (f) - The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks

118. The internal legislation relating to Article 5 (f) of the Convention is as follows.

(a) The Constitution

"Article 4. Freedom and equality. In Guatemala all human beings are free and equal in dignity and in rights. Men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition which impairs his dignity. Human beings should behave fraternally towards each other.

Article 5. Freedom of action. Everyone has the right to do whatever the law does not prohibit; no one shall be obliged to carry out orders which are not based on and issued in accordance with the law. No one may be persecuted or molested for his opinions or for acts which do not involve a breach of the law.

...

Article 26. Freedom of movement. Everyone has the right to enter, stay in, pass through and leave the national territory and to change his domicile or residence, subject only to such restrictions as are imposed by law.

No Guatemalan may be expelled from or denied admission to the national territory or denied a passport or other identification documents.

Guatemalans may enter and leave Guatemala without being required to produce a visa.

The penalties which may be incurred by anyone who contravenes this provision shall be specified by law.

...

Article 29. Free access to the courts and to agencies of the State. Everyone shall have free access to the courts, agencies and offices of the State for the purpose of bringing actions and exercising his rights in accordance with the law.

Aliens may have recourse to the diplomatic channel only in the case of a denial of justice.

The mere fact of a decision being contrary to their interests shall not be deemed a denial of justice and they must, in any event, have exhausted the legal remedies provided under Guatemalan law.

Article 30. Public character of administrative decisions. All acts of the administration are public. Those concerned have the right to obtain, at any time, such reports, copies, reproductions and certificates as they may request and to see such files as they may wish to consult, except where military or diplomatic matters affecting national security or information provided by individuals under a guarantee of confidentiality are involved.

Article 31. Access to State archives and records. Everyone has the right to know what is recorded concerning him in archives, files and every other form of State record, as well as the purpose for which the information is intended. He also has the right to correct, rectify and bring up to date such information. Records and archives concerning political affiliation are prohibited, with the exception of those maintained by electoral authorities and political parties.

...

Article 44. Rights inherent in the human person. The rights and guarantees granted by the Constitution do not exclude others which, although not expressly referred to therein, are inherent in the human person.

The interests of society shall take precedence over private interests.

Laws, governmental orders and orders of any other kind which diminish, restrict or distort rights guaranteed by the Constitution shall be null and void ipso jure.

Article 45. Action against offenders and legitimacy of resistance. The right to take proceedings against violators of human rights shall be a public right and may be exercised simply by lodging a complaint, without bond or formality of any kind. Resistance by the people to protect and defend the rights and guarantees set forth in the Constitution shall be legitimate.

Article 46. Primacy of international law. It is established as a general principle that, in matters of human rights, treaties and conventions accepted and ratified by Guatemala shall take precedence over internal law.

...

Article 120. Intervention in enterprises supplying public services. The State may, in case of force majeure and for the time strictly

necessary, intervene in enterprises supplying essential public services to the community, whenever their operation is hindered.

...

Article 127. Status of waters. All waters are inalienable and imprescriptible elements of the public domain. Their exploitation, use and enjoyment are granted in the manner established by law and in keeping with the interests of society. A specific law shall regulate this matter.

Article 128. Utilization of waters, lakes and rivers. The utilization of the water of lakes and rivers for agricultural, livestock, touristic or any other purposes that contribute to the development of the national economy is in the service of the community and not of any particular person, but users are obliged to reforest the banks and waterways concerned and to facilitate access to them.

...

Article 131. Commercial transport service. Because of its economic importance in the development of the country, all commercial and tourist transport services, whether by land, sea or air, including ships, vehicles, installations and services, are declared to be matters of public utility, and they therefore enjoy the protection of the State.

Commercial land terminals, airports and seaports are considered to be property of common public use and, like the transport services, are subject solely to the jurisdiction of civilian authority. The utilization for commercial purposes of ships, vehicles and terminals which are the property of Government agencies or of the National Army is prohibited; this provision does not apply to decentralized State bodies that furnish transport services.

Governmental authorization is necessary for the establishment and operation of any national or international transport service. In this connection, once the relevant legal requirements are fulfilled by an applicant, the governmental authority shall immediately furnish the authorization.

...

Article 138. Limitation of constitutional rights. It is the duty of the State and the authorities to maintain the inhabitants of the Nation in the full enjoyment of the rights guaranteed by the Constitution.

...

Article 154. Public officials: subjection to the law. Public officials are the depositaries of authority, legally responsible for their official conduct, subject to, and never above, the law.

Public officials and employees are in the service of the State and not of any political party.

The function of a public official cannot be delegated except in the cases specified by the law and it may not be exercised without a prior oath of loyalty to the Constitution.

Article 155. Responsibility for violation of the law. When in the performance of his duties a State dignitary, official or worker violates the law to the detriment of an individual, the State and the State institution in which he serves shall be jointly and severally liable for the damage and injury caused.

Civil liability actions may be brought against public officials and employees so long as the time allowed under the Statute of Limitations, which shall be 20 years, has not run out.

In this case, criminal liability shall be extinguished at the end of twice the period specified by the law for the prescription of punishment.

Neither Guatemalans nor aliens may claim compensation from the State for damage or injury caused by armed movements or civil disturbances.

Article 156. No obligation to carry out illegal orders. No public, civilian or military official or employee shall be obligated to carry out orders that are manifestly illegal or that involve the commission of an offence.

Article 265. Applicability of amparo. The institution of amparo is established in order to protect persons from threats of violations of their rights or to restore their rights if they have been violated. There are no circumstances in which amparo is not applicable and it shall be granted whenever actions, orders, decisions or laws of the authorities imply a threat to or restriction or violation of rights guaranteed by the Constitution and the law."

(b) Civil Code (Decree-Law No. 106)

"Article 458. National property of common use. The following are national property of common use: (1) the streets, parks, squares, roads and bridges which are not privately owned; (2) the harbours, piers, jetties, pontoons and other general-purpose works built or acquired by the State or municipalities; (3) the waters of the territorial maritime zone within the areas and boundaries established by law; the lakes and rivers navigable for vessels and rafts and their banks; the rivers, and watercourses which bound the national territory; the waterfalls and sources of water for industrial use, in the form laid down by law; and the waters not used by private individuals; (4) the terrestrial maritime zone of the Republic, the continental shelf, the airspace and the stratosphere within the limits and in the form determined by law.

...

Article 461. Use of national property. Property of common use is inalienable or imprescriptible. It may be used by all inhabitants, with the restrictions laid down by law, but for special uses it is necessary to

obtain a concession granted in accordance with the requirements of the corresponding legislation.

Article 462. The property which constitutes the assets of the State, the municipalities and the decentralized State bodies is subject to special legislation and, subsidiarily, to the provisions of this Code."

(c) Municipal Code (Congressional Decree No. 58-88)

"Article 3. Municipal services. The municipality has as its primary purpose the provision and administration of public services for the population within its territorial jurisdiction, in principle on a non-profit-making basis, and therefore is responsible for establishing, maintaining, improving and regulating those services, while ensuring that they operate efficiently, safely, continuously, conveniently and hygienically for the inhabitants and beneficiaries concerned and, where necessary, assessing and collecting fair and just rates and taxes.

...

Article 31. Establishment and provision of municipal services. Municipal public services shall be provided and administered:

(a) By the municipalities and their administrative departments and service units and the enterprises they organize.

(b) By concessions granted in accordance with the law.

...

Article 34. Intervention in municipal services. Without prejudice to the provisions of Article 120 of the Political Constitution of the Republic, the municipality is empowered temporarily to intervene in a municipal public service which is being poorly supplied or provided, or which the concession-holder has ceased to provide without authorization, or in connection with which the concession-holder fails to respect his contractual obligations."

Commentary (Article 5)

119. The right to equal treatment before the tribunals and all other bodies administering justice is fully regulated by the State of Guatemala.

120. As regards compliance with the law, to some extent it could be said to be partial, since in specific cases the administration of justice responds favourably to family and political ties, presents and influence peddling, between plaintiffs and judges, which prevents cases tried by the judicial branch being conducted in accordance with due process, so that the rights of the less well-off may be infringed.

121. With reference to the rights to security of person and political rights protected by the State, they are regulated by the internal legislation of the Guatemalan State. However, within the context of common and political violence

cases arise which do not involve the State but are dealt with by the legal means available for the purpose.

122. Likewise, all citizens enjoy freedom of political participation and organization, without restrictions other than those laid down by law, to such an extent that there are now 78 popularly elected mayors, 8 popularly elected deputies in the Congress of the Republic, one minister and one deputy-minister of state and various public officials, all of Mayan ancestry, without their necessarily displaying any discriminatory attitude towards the Ladino or Mestizo population.

123. With respect to other civil rights, in particular those relating to freedom of movement and residence, leaving the country, nationality, marriage, property, inheritance, freedom of thought, freedom of opinion and expression and freedom of peaceful assembly and association, there are no restrictions or discrimination for any of the inhabitants of Guatemala. Furthermore, these rights are duly regulated in the positive laws in force in Guatemala.

124. With respect to economic, social and cultural rights, in particular the rights to work, to form and join trade unions, to housing, to public health, medical care, social security and social services, to education and training, to equal participation in cultural activities and the right of access to any place or service intended for use by the general public, there are no restrictions for the inhabitants of Guatemala, in accordance with the internal legislation in force.

125. However, it should be mentioned that the availability of housing, public health, medical care and education depends on the ability to pay and as most of the population is of slender means these services are selective.

126. The State of Guatemala is aware of these problems which affect most of the population and, consequently, is seeking ways of alleviating the situation prevailing in the country to the greatest possible extent.

Article 6

127. The internal legislation relating to Article 6 of the Convention is as follows.

(a) The Constitution

"Article 1. Protection of the individual. The State of Guatemala is constituted to protect the individual and the family; its supreme aim is the achievement of the common good.

Article 2. Duties of the State. It is the duty of the State to guarantee, for the inhabitants of the Republic, life, liberty, justice, security, peace and the full development of the individual.

Article 3. The right to life. The State guarantees and protects human life from the time of conception, as well as the integrity and security of the person.

...

Article 5. Freedom of action. Everyone has the right to do whatever the law does not prohibit; no one shall be obliged to carry out orders which are not based on and issued in accordance with the law. No one may be persecuted or molested for his opinions or for acts which do not involve a breach of the law.

...

Article 28. Right of petition. The inhabitants of the Republic of Guatemala have the right to address petitions, individually or collectively, to the public authorities and the latter are required to consider them and take a decision upon them according to law.

In the case of administrative matters, petitions must be dealt with and the decisions thereon communicated within a period not exceeding 30 days.

In the case of fiscal matters, taxpayers challenging administrative decisions in cases involving objection to or adjustment of any tax shall not be required to make prior payment of the tax or any security.

...

Article 44. Rights inherent in the human person. The rights and guarantees granted by the Constitution do not exclude others which, although not expressly referred to therein, are inherent in the human person.

The interests of society shall take precedence over private interests.

Laws, governmental orders and orders of any other kind which diminish, restrict or distort rights guaranteed by the Constitution shall be null and void ipso jure.

Article 45. Action against offenders and legitimacy of resistance. The right to take proceedings against violators of human rights shall be a public right and may be exercised simply by lodging a complaint, without bond or formality of any kind. Resistance by the people to protect and defend the rights and guarantees set forth in the Constitution shall be legitimate.

...

Article 138. Limitation of constitutional rights. It is the duty of the State and the authorities to maintain the inhabitants of the Nation in the full enjoyment of the rights guaranteed by the Constitution.

...

Article 152. Public power. Power is derived from the people. Its exercise is subject to the limits laid down by this Constitution and the law.

No one, no sector of the people, no armed or political force, may arrogate to itself the exercise of power.

Article 153. The rule of law. The rule of law extends to all persons present in the territory of the Republic.

Article 154. Public officials; subjection to the law. Public officials are the depositaries of authority, legally responsible for their official conduct, subject to, and never above, the law.

Public officials and employees are in the service of the State and not of any political party.

The function of a public official cannot be delegated except in the cases specified by the law and it may not be exercised without a prior oath of loyalty to the Constitution.

Article 155. Responsibility for violation of the law. When in the performance of his duties a State dignitary, official or worker violates the law to the detriment of an individual, the State and the State institution in which he serves shall be jointly and severally liable for the damage and injury caused.

Civil liability actions may be brought against public officials and employees so long as the time allowed under the Statute of Limitations, which shall be 20 years, has not run out.

In this case, criminal liability shall be extinguished at the end of twice the period specified by the law for the prescription of punishment.

Neither Guatemalans nor aliens may claim compensation from the State for damage or injury caused by armed movements or civil disturbances.

Article 156. No obligation to carry out illegal orders. No public, civilian or military official or employee shall be obligated to carry out orders that are manifestly illegal or that involve the commission of an offence.

...

Article 265. Applicability of amparo. The institution of amparo is established in order to protect persons from threats of violations of their rights or to restore their rights if they have been violated. There are no circumstances in which amparo is not applicable and it shall be granted whenever actions, orders, decisions or laws of the authorities imply a threat to or restriction or violation of rights guaranteed by the Constitution and the law."

(b) Amparo, Habeas Corpus and Constitutionality Act (Decree 1-86 of the Constituent National Assembly)

"Article 1. Object of the Act. The object of this Act is to develop the guarantees and defences of the constitutional order and the rights of the individual protected by the Political Constitution of the Republic of Guatemala, the law and the international conventions ratified by Guatemala.

Article 2. Broad interpretation of the Act. The provisions of this Act shall always be interpreted broadly, so as to ensure that human rights are properly protected and the guarantees and defences of the constitutional order function effectively.

Article 3. Supremacy of the Constitution. The Constitution takes precedence over any law or treaty. Nonetheless, in matters of human rights, treaties and conventions accepted and ratified by Guatemala take precedence over internal law..

Article 4. Right of defence. Defence of one's person and one's rights is inviolable. No one may be sentenced or deprived of his rights without having been charged, heard and convicted in a lawful trial before a competent and previously established court or tribunal.

In any administrative or judicial proceedings the guarantees of due process must be maintained and respected.

Article 5. Procedural principles for the application of this Act. In any proceedings relating to the constitutional system of justice the following principles apply:

(a) All days and hours are working days and hours.

(b) Proceedings shall be on plain paper, subject to a final decision concerning presentation on stamped paper.

(c) Any notification must be given, at the latest, on the day following the date of the decision in question, subject to the time necessary for delivery.

(d) The courts must give the hearing and deciding of such cases priority over other matters.

Article 6. Initiation ex officio. In any proceedings relating to the constitutional system of justice, only the bringing of the proceedings need be requested. All subsequent steps are initiated ex officio on the responsibility of the corresponding court which shall order that presentational and procedural defects appearing during the proceedings be corrected by the party concerned.

Article 7. Supplementary application of other laws. The ordinary law, interpreted in harmony with the spirit of the Constitution, shall be applicable as a supplementary reference in all the situations provided for by this Act.

Article 8. Object of amparo. The institution of amparo is established in order to protect persons from threats of violations of their rights or to restore their rights if they have been violated. There are no circumstances in which amparo is not applicable and it shall be granted whenever actions, orders, decisions or laws of the authorities imply a threat to or restriction or violation of rights guaranteed by the Constitution and the law.

...

Article 10. Justification of amparo. Amparo is justified in any situation likely to involve a risk or threat to or a restriction or violation of the rights recognized by the Constitution and the laws of the Republic of Guatemala, whether that situation stems from persons and entities of public law or entities of private law.

Everyone has the right to apply for amparo, among other things:

(a) In order to retain the enjoyment of the rights and guarantees established by the Constitution or some other law or to have the enjoyment of those rights restored.

(b) In order to have it declared, in specific cases, that a law, a regulation, a decision or an act of authority is not binding upon the applicant because it infringes or restricts a right guaranteed by the Constitution or recognized by some other law.

(c) In order to have it declared, in specific cases, that an order or decision, not only legislative, of the Congress of the Republic is not applicable to the applicant because it infringes a constitutional right.

(d) When the authority of any jurisdiction issues a regulation, order or decision of any kind involving abuse of authority or the exceeding of its legal powers or when it lacks such powers or exercises them in a form such that the injury which is done or may be done cannot be remedied by some other legal means of defence.

(e) When in administrative proceedings unreasonable or illegal requirements, steps or activities are imposed on the party concerned or there is no remedy or recourse with suspensive effect.

(f) When petitions and proceedings between administrative authorities are not settled within the time limits laid down by law or, if there are no such time limits, within a period of thirty days, once the procedure in question has been exhausted, as well as when petitions are not accepted for consideration.

(g) In political matters, when rights recognized by the law or by the statutes of political organizations are infringed. However, in purely electoral matters, the court's analysis and examination shall be confined to the legal aspect, questions of fact accepted as proven in the judicial review being taken for granted.

(h) In matters of a judicial and administrative order, where there are procedures and remedies established by law by means of which proper redress can be obtained in accordance with the legal principle of due process, if, after the party concerned has made use of the remedies established by law, there remains a threat to, restriction upon or violation of rights guaranteed by the Constitution and the law.

The provisions of the preceding articles shall not exclude any other cases which, although not enumerated, are eligible for amparo in accordance with Articles 265 of the Constitution and 8 of this Act."

(c) Code of Penal Procedure (Congressional Decree No. 52-73)

"Article 157. Nature of the function. The counsel for the defence shall lodge appeals and request the adoption of measures which his professional judgment tells him are the most favourable for the defendant.

In performing his duties he shall comply with the law. He shall observe professional secrecy.

His task entails the seeking of justice.

In every case, he shall observe the principles of the lawyer's code of professional ethics.

...

Article 175. Declaration of straitened circumstances. Either the defendant or the plaintiff or both may be declared to be in straitened circumstances for litigation purposes. The declaration shall be made, with three days for hearing the Government Procurator's Office, if, in the opinion of the judge, it is justified by the family unit which depends economically on the defendant, his or her wages, emoluments or salary or, where appropriate, those of his or her spouse or cohabiting partner or of his or her children, his or her mode of life, and any other conditions and circumstances which may be necessary and apparent within the proceedings."

Commentary (Article 6)

128. In the State of Guatemala, everyone under its jurisdiction is protected and accordingly has the right to challenge or appeal whenever his fundamental rights and freedoms are positively or presumedly infringed.

129. Moreover, those who lack the means to pay for professional services may turn to the people's law offices sponsored by the departments of legal and social sciences of the universities operating in Guatemala.

130. However, there are cases in which inhabitants, through ignorance of the law and the institutions involved in the administration of justice, do not make use of the official remedies to obtain restoration of the rights they say have been infringed.

Article 7

131. The internal legislation relating to Article 7 of the Convention is as follows.

(a) The Constitution

"Article 1. Protection of the individual. The State of Guatemala is constituted to protect the individual and the family; its supreme aim is the achievement of the common good.

Article 2. Duties of the State. It is the duty of the State to guarantee, for the inhabitants of the Republic, life, liberty, justice, security, peace and the full development of the individual.

...

Article 4. Freedom and equality. In Guatemala all human beings are free and equal in dignity and in rights. Men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition which impairs his dignity. Human beings should behave fraternally towards each other.

Article 5. Freedom of action. Everyone has the right to do whatever the law does not prohibit; no one shall be obliged to carry out orders which are not based on and issued in accordance with the law. No one may be persecuted or molested for his opinions or for acts which do not involve a breach of the law.

...

Article 71. Right to education. Freedom of education and of teaching criteria is guaranteed. The State shall be obliged to provide education for its inhabitants without any discrimination. The establishment and maintenance of cultural education centres and museums are declared to be necessary and in the public interest.

Article 72. Purposes of education. The primary purpose of education is the full development of the human person and acquisition of knowledge of the Nation and of the world and of their culture.

Education, teaching, social training and systematic instruction in the Constitution of the Republic and human rights are declared to be in the national interest.

...

Article 75. Promotion of literacy. The promotion of literacy is declared to be a matter of national urgency and is shall be a social duty to contribute to it. The State must organize and encourage it by providing all necessary resources.

Article 76. The educational system and bilingual instruction. The administration of the educational system shall be decentralized and regionalized.

In schools established in areas with a predominantly indigenous population, instruction shall preferably be given in bilingual form.

...

Article 79. Agricultural education. Agricultural studies and apprenticeship, agricultural operations, agricultural marketing and industrialization of agriculture are declared to be in the national interest. The National Central School of Agriculture is established as a non-governmental, autonomous institution with juridical personality and its own assets. It must organize, direct and develop national curricula for instruction in agriculture and forestry at the intermediate education level. It shall be governed by its own statutes and shall be allocated not less than 5 per cent of the regular budget of the Ministry of Agriculture.

Article 80. Promotion of science and technology. The State recognizes and shall promote science and technology as fundamental bases for national development. The law shall regulate all matters relating to these subjects.

...

Article 82. Autonomy of the University of San Carlos of Guatemala. The University of San Carlos of Guatemala is an autonomous institution with juridical personality. As the only State university, it shall have exclusive responsibility for directing, organizing and developing State higher education and State vocational education at the university level and for the dissemination of culture in all its forms. It shall promote by all the means available to it research in all the spheres of human knowledge and it shall cooperate in the study and solution of national problems.

It shall be governed by its Organization Act and by its own statutes and rules and the principle of representation of faculty, graduates and students shall be observed in the composition of its governing bodies.

...

Article 85. Private universities. The private universities, which are independent institutions, shall be responsible for organizing and developing the private higher education of the Nation with the aim of contributing to vocational training, scientific research, the dissemination of culture and the study and solution of national problems.

Once a private university has been authorized to function, it shall have juridical personality and freedom to establish its faculties and institutions, and to develop its academic and teaching activities and its curricula."

(b) National Education Act (Congressional Decree No. 12-91)

"Article 1. Principles. Education in Guatemala is based on the following principles:

(a) Education is an inherent right of the person and an obligation upon the State.

(b) Respect for the dignity of the person and effective observance of human rights.

(c) The pupil is the focus and subject of the educational process.

(d) Education is directed towards the comprehensive development and improvement of the human being in a process that is continuous, gradual and progressive.

(e) Education is an instrument which can help to fashion a just and democratic society.

(f) Education is defined and provided in a multilingual, multiethnic and multicultural environment as a function of the communities which shape it.

(g) Education is a scientific, humanistic, critical, dynamic, participatory and transformative process.

Article 2. Purposes. The purposes of education in Guatemala are as follows:

(a) To provide an education based on humane, scientific, technical, cultural and spiritual principles which comprehensively mould the pupil, prepare him for work and to take his place in society, and allow him access to other standards of living.

(b) To cultivate and foster the physical, intellectual, moral, spiritual and civic qualities of the population rooted in its history and the values of respect for human nature and the human person.

(c) To reinforce in the pupil the importance of the family as the basic social unit and as the first permanent source of education.

(d) To form citizens with a critical awareness of the Guatemalan reality in terms of the national historical process in order that they may thus participate actively and responsibly in the search for humane and just economic, social and political solutions.

(e) To stimulate in the pupil an interest in science and modern technology as a means of preserving the environment or modifying it in a controlled fashion on behalf of man and society.

(f) To promote the systematic teaching of the Political Constitution of the Republic and to strengthen the defence of and respect for human rights and the Declaration of the Rights of the Child.

(g) To train and induce the pupil to contribute to the strengthening of authentic democracy and the economic, political and cultural independence of Guatemala within the international community.

(h) To foster in the pupil a complete sense of organization, responsibility, order and cooperation while developing his ability to transcend his individual interests in accordance with the interests of society.

(i) To develop in the pupil aptitudes and attitudes favourable to activities of a physical, sporting and aesthetic nature.

(j) To develop a critical and investigative attitude in the pupil so that he can effectively confront the changes which society places in his path.

(k) To promote in the pupil responsible attitudes and a commitment to the defence and development of the historical, economic, social, ethnic and cultural heritage of the Nation.

(l) To promote co-education at all levels of the educational system.

(m) To promote and foster systematic adult education."

(c) Anti-Illiteracy Act (Congressional Decree No. 43-86)

"Article 1. Definition. For the purposes of this Act teaching literacy means the initial phase of the systematic process of comprehensive basic education and also implies the development of skills and knowledge in response to the socio-cultural and economic and productive needs of the population.

Article 2. Subjects of the literacy teaching process. The subjects of the literacy teaching process are any illiterate persons residing in the country aged fifteen or over, in accordance with the priorities established in the regulations relating to this Act.

Article 3. Object of the process. The essential object of the national literacy teaching process is to provide sufficient means for the illiterate population to gain access to the written culture and thereby contribute to the development of the human potential so that the person may participate actively in improving his quality of life and his ability to cooperate for the common good."

(d) Regulations of the Anti-Illiteracy Act

"Article 1. Object. These Regulations regulate matters relating to the administrative structure, functions and procedures for the implementation of the national literacy teaching process, in accordance with the principles and provisions of the Anti-Illiteracy Act.

Article 2. Subjects of the literacy teaching process. The subjects of the literacy teaching process are illiterate persons resident in the country, in the following order of priority:

(1) Persons between 15 and 30 years of age.

(2) Persons between 31 and 45 years of age.

(3) Persons 46 years of age or over.

Article 3. Use of indigenous languages in the teaching of literacy. The monolingual population speaking an indigenous language has the right to be taught to read and write in its mother tongue. The bilingual population, speaking both an indigenous language and Spanish, is free to choose the language in which it wishes to be taught to read and write.

Article 4. Teaching literacy to the migrant population. Illiterate persons forming part of a temporary migrant population shall benefit from specific programmes approved by the National Anti-Illiteracy Committee, in their community of origin or place of work. Anti-illiteracy programmes must also be set up for the displaced, refugees and other similar groups."

(e) Constitutional Law on the Expression of Opinion (Decree No. 9 of the Constituent Assembly of the Republic)

"Article 1. Opinions may be freely expressed in any form and in no case may a bond or security be required in order to exercise this right nor may it be subjected to prior censorship.

Article 2. "Printed matter" is defined as the fixation of ideas by means of printing, lithography, photography, mimeography, polygraphy, phonographic recording or any other mechanical procedure currently employed or which may be employed in the future for the reproduction of ideas.

For the purposes of this law, any other form of representation of ideas intended for the public, such as prints, photographs, engravings, emblems, diplomas, medals, or phonographic disks, tapes or wires, whether fixed on paper, fabric or some other kind of material, is considered equivalent to "printed matter".

Article 3. Printed matter is classified as books, pamphlets, periodicals, leaflets and posters.

A book is any printed matter which expounds or develops a topic or a series of topics or contains systematized or miscellaneous compilations, consisting of one hundred or more pages.

A pamphlet is printed matter of the same nature as a book, but less extensive in content, consisting of more than four and less than one hundred pages.

A periodical is printed matter published serially, at regular intervals, under the same title, and distributed among the public in order to disseminate news, comment and opinion. This category includes supplements, specialized or miscellaneous, and special editions, whatever the number of pages.

A leaflet is printed matter consisting of one to four pages which is published and distributed occasionally.

A poster is printed matter intended for display in public places.

...

Article 5. Freedom of information is unconditional, and journalists shall have access to all sources of information. With respect to acts of the public administration, the provisions of the Political Constitution of the Republic shall apply.

...

Article 15. For the purposes of this law, radio broadcasting is deemed to be the expression of opinion by radio.

Article 16. Radio broadcasts are classified as radio magazines, newscasts, programmes, commentaries, talks and lectures.

A radio magazine is a series of broadcasts always with the same title, transmitted one or more times a day or at regular intervals for the purpose of disseminating news, ideas and opinions. This definition includes supplementary or special magazine broadcasts.

A newscast is a regular radio broadcast exclusively devoted to reporting events taking place at home or abroad.

A programme is an entertainment, cultural or advertising broadcast, of any length.

A commentary is any gloss or opinion expressed on events taking place at home or abroad.

...

Article 19. A radio broadcast shall be considered to have been published when heard by two competent witnesses on different radio receivers."

Commentary (Article 7)

132. The State of Guatemala fully recognizes the need for greater dissemination of the Universal Declaration of Human Rights and the United Nations Declaration on the Elimination of all Forms of Racial Discrimination. To this end, plans and programmes are currently being pushed forward at all levels of the population for the purpose of propagating and fostering education in human rights with a view to upholding tolerance of the social organization, linguistic expression and identity and respect for the traditions and customs of the various ethnic groups which make up Guatemalan society.

133. Similarly, the State of Guatemala is promoting and implementing policies of a cultural nature, such as folklore festivals and craft markets, intended to encourage the fraternal coexistence of the various ethnic groups which make up Guatemalan society. These events are accordingly the responsibility of institutions such as the Departmental Governor's Office, the Ministry of Culture and Sport, the Institute of Anthropology and History, the municipalities and the social and cultural organizations which sponsor events of this kind.

Whether the provisions of the Convention can be invoked before, or directly enforced by, the courts, other tribunals or administrative authorities or whether they must be transformed into internal laws or administrative regulations in order to be enforced by the authorities concerned

134. The pertinent internal legislation is as follows.

(a) The Constitution

"Article 46. Primacy of international law. It is established as a general principle that, in matters of human rights, treaties and conventions accepted and ratified by Guatemala shall take precedence over internal law.

...

Article 152. Public power. Power is derived from the people. Its exercise is subject to the limits laid down by this Constitution and the law.

No one, no sector of the people, no armed or political force, may arrogate to itself the exercise of power.

Article 153. The rule of law. The rule of law extends to all persons present in the territory of the Republic.

Article 154. Public officials: subjection to the law. Public officials are the depositaries of authority, legally responsible for their official conduct, subject to, and never above, the law.

Public officials and employees are in the service of the State and not of any political party.

The function of a public official cannot be delegated except in the cases specified by the law and it may not be exercised without a prior oath of loyalty to the Constitution.

Article 155. Responsibility for violation of the law. When in the performance of his duties a State dignitary, official or worker violates the law to the detriment of an individual, the State and the State institution in which he serves shall be jointly and severally liable for the damage and injury caused.

Civil liability actions may be brought against public officials and employees so long as the time allowed under the Statute of Limitations, which shall be 20 years, has not run out.

In this case, criminal liability shall be extinguished at the end of twice the period specified by the law for the prescription of punishment.

Neither Guatemalans nor aliens may claim compensation from the State for damage or injury caused by armed movements or civil disturbances.

Article 156. No obligation to carry out illegal orders. No public, civilian or military official or employee shall be obligated to carry out orders that are manifestly illegal or that involve the commission of an offence.

Article 157. Legislative power and election of deputies. The legislative power is invested in the Congress of the Republic, composed of deputies elected directly by the people by universal suffrage, through the system of a national list and electoral districts.

The law shall specify the number of deputies for each district in proportion to its population and the number in respect of the national list. It shall also determine the manner of filling vacancies and establish rules concerning conflict of interests to which the office of deputy is subject.

...

Article 171. Other functions of the Congress. The Congress shall also:

(a) Decree, amend and appeal laws;

...

(l) Approve treaties, conventions or other international arrangements, before ratification, when:

(1) They affect laws in force for which this Constitution requires the same majority of votes.

(2) They affect the territories of the Nation, establish the economic or political union of Central America, either total or partial, or attribute or transfer powers to

organizations, institutions or mechanisms created within a community legal order to realize joint regional objectives in the Central American framework.

(3) They impose financial obligations on the State in an amount exceeding 1 per cent of the Budget of Ordinary Revenue or when the amount of the obligation is unknown.

(4) They constitute an undertaking to submit any matter to international judicial or arbitral decision.

(5) They contain a general arbitration clause or clause requiring submission to an international jurisdiction.

...

Article 174. Initiation of legislation. The deputies members of the Congress, the Executive Branch, the Supreme Court of Justice, the University of San Carlos of Guatemala and the Supreme Electoral Tribunal have the right to initiate legislation.

Article 175. Constitutional hierarchy. No law may be at variance with the provisions of the Constitution. Laws which violate or impair constitutional provisions are null and void ipso jure.

Laws classified as constitutional may only be amended by a vote of two thirds of all the deputies members of the Congress, after a favourable report by the Constitutional Court."

(b) Amendments to the Constitution

Enactment of legislation

"Article 11. Article 176 shall be amended to read as follows:

'Article 176. Introduction and discussion. After a draft law has been introduced, the procedure laid down in the Legislative Branch Organization and Rules of Procedure Act shall be followed. It shall be discussed at three meetings held on different days and may not be put to the vote until it is considered to have been sufficiently discussed at the third meeting. This shall not apply to cases which the Congress declares to be of national urgency by a favourable vote of two thirds of all the deputies members of the Congress.'

Article 12. Article 177 shall be amended to read as follows:

'Article 177. Adoption, approval and promulgation. Once a draft law has been adopted, the Executive Committee of the Congress of the Republic shall submit it, within not more than ten days, to the Executive Branch for approval, promulgation and publication.'

Article 13. The second paragraph of Article 178 shall be amended to read as follows:

'Article 178. Within fifteen days of receipt of the decree and on the basis of a decision by the Council of Ministers, the President of the Republic may return the decree to the Congress with such observations as he deems appropriate in the exercise of his right of veto. Laws may be vetoed in part.

If the Executive Branch does not return the decree within fifteen days following the date of its receipt, it shall be deemed to have been approved and the Congress must promulgate it as a law within the eight days next following. If the Congress closes its session before the expiry of the period in which the veto may be exercised, the Executive Branch must return the decree within the first 8 days of the next session of ordinary meetings.'

Article 14. Article 179 shall be amended to read as follows:

'Article 179. Primacy of the legislature. If a decree is returned to the Congress, the Executive Committee shall inform it of the situation at the next plenary meeting and the Congress may, within a period of not more than thirty days, reconsider the decree or reject it. If the reasons given for the veto are not accepted and the Congress rejects the veto by a majority of two thirds of its members, the Executive Branch shall be required to approve the decree and to promulgate it within eight days of its receipt. If the Executive Branch does not do so, the Executive Committee of the Congress shall order its publication within a period of not more than three days and it shall be effective as a law of the Republic.'

Article 15. Article 180 shall be amended to read as follows:

'Article 180. Entry into force. The law shall enter into force throughout the national territory eight days after its publication in full in the Diario Oficial, unless the law itself extends or abridges that period or the territorial area of application.'

...

Article 17. Article 183 shall be amended to read as follows:

'Article 183. Functions of the President of the Republic. The functions of the President are:

(a) To obey, and to secure obedience to the Constitution and the laws;

...

(c) To approve, promulgate and execute all laws and cause them to be executed, to issue decrees on subjects authorized by the Constitution, as well as decisions, regulations and orders with a view to the strict enforcement of the law, without modification of its spirit;

...

(g) To present draft laws to the Congress of the Republic;

(h) To exercise the right of veto with respect to laws passed by the Congress except in cases where the approval of the Executive is not required in conformity with the Constitution;

(i) To submit treaties and conventions of an international character and contracts and concessions relating to public services for the consideration or approval of the Congress before their ratification ...'."

Consequently, the provisions of the International Convention on the Elimination of all Forms of Racial Discrimination can be invoked before the courts, other tribunals or administrative authorities, but these provisions of international law must first be subjected to the process of enactment of legislation by the Congress of the Republic which, under the Constitution, must approve treaties, conventions and other international arrangements, before ratification, when they are to the advantage of the State of Guatemala. Once accepted and ratified, international legal instruments in the field of human rights become ipso facto part of Guatemalan internal legislation, constituting positive and relevant national law which can be invoked in accordance with Article 46 of the Constitution of the Republic and, in particular, takes precedence over internal law where human rights are concerned.